



# EXHIBIT A

Promega Corporation v. Life Technologies Corporation

 **Bishop, Ellen (Vol. 01) - 11/29/2011 [Bishop, Ellen]**

1 CLIP (RUNNING 00:31:04.222)

 QC\_020412

BISHDES

66 SEGMENTS (RUNNING 00:31:04.222)



1. PAGE 9:01 TO 10:01 (RUNNING 00:01:18.968)

00009:01 THE VIDEOGRAPHER: Here begins Video  
02 Number 1 of Volume I in the deposition of Ellen  
03 Bishop, in the matter of Promega Corporation versus  
04 Life Technologies Corporation, et al., in  
05 United States District Court, Western District of  
06 Wisconsin. The case number is 10-cv-281-bbc.  
07 Today's date is November 29, 2011. The  
08 time on the video monitor is 9:06 a.m.  
09 The video operator today is Joseph Mourgos  
10 representing Combs Reporting, 595 Market Street,  
11 Suite 620, San Francisco, California.  
12 This video deposition is taking place at  
13 101 Lincoln Centre Drive, Third Floor, Foster City,  
14 California, and was noticed by Medlen & Carroll LLP.  
15 Counsel, please voice identify yourselves  
16 and state whom you represent.  
17 MR. CARROLL: Pete Carroll representing  
18 the plaintiff, Promega.  
19 MR. MCCARTHY: Michael McCarthy  
20 representing Defendant Life Technologies  
21 Corporation.  
22 THE VIDEOGRAPHER: The court reporter  
23 today is Brandon Combs of Combs Reporting,  
24 Incorporated.  
25 Would the reporter please administer the  
00010:01 oath.

2. PAGE 11:11 TO 11:23 (RUNNING 00:00:24.760)

11 Q. Now, if you could state your full name for  
12 the record.  
13 A. Ellen Jane Bishop.  
14 Q. And your residence?  
15 A. The actual address or the city?  
16 Q. Yeah.  
17 A. 3224 New London Lane, Modesto, California  
18 95355.  
19 Q. And your employer?  
20 A. Life Technologies.  
21 Q. And what is your current position now?  
22 A. My title is field sales and support  
23 specialist for human identification.

3. PAGE 22:01 TO 22:07 (RUNNING 00:00:20.662)

00022:01 Q. And what were your duties? Were you going  
02 to go out and work with the customer in the lab or  
03 answer phones? What were your duties in 2005?  
04 A. My primary duties were to answer and  
05 respond to customer emails and phone calls regarding  
06 technical questions for the human identification  
07 product line.

4. PAGE 22:16 TO 22:20 (RUNNING 00:00:11.953)

16 Q. Okay. So from 2005 to today, has your

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page 1

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17 title changed?  
18 A. It has. I now am senior field sales and  
19 support specialist, and I also am human identity  
20 technical support team lead.

**5. PAGE 23:02 TO 23:04 (RUNNING 00:00:05.842)**

02 Q. Now, in 2005, who did you report to as  
03 direct supervisor?  
04 A. Michelle Shepherd.

**6. PAGE 30:15 TO 30:17 (RUNNING 00:00:12.463)**

15 Q. Okay. All right. Let me show you what  
16 the court reporter has marked as Exhibit 2. It's a  
17 three-page document, Bates stamped LIFE-0495296.

**7. PAGE 30:20 TO 31:13 (RUNNING 00:00:47.255)**

20 MR. CARROLL: Q. Okay. Have you had a  
21 chance to look it over?  
22 A. Yes.  
23 Q. All right. And appears to be an email  
24 chain?  
25 A. Correct.  
00031:01 Q. And let's look at the second page, it  
02 appears to be an email that you authored. Do you  
03 see that?  
04 A. Yes.  
05 Q. And it says there, sent by and then a  
06 colon, Ellen J. Bishop. Do you see that?  
07 A. Yes.  
08 Q. And it's to Melissa Kotkin and Michael  
09 Hughes; correct?  
10 A. Correct.  
11 Q. And the re line or the subject line says  
12 non-HID, POP7; right?  
13 A. POP7.

**8. PAGE 31:21 TO 31:23 (RUNNING 00:00:10.351)**

21 Q. And you're talking to Melissa and Mike in  
22 your email about a customer?  
23 A. Correct.

**9. PAGE 32:03 TO 33:06 (RUNNING 00:01:09.914)**

03 Q. Any question that you authored it?  
04 A. By looking at this, no.  
05 Q. No question?  
06 A. It doesn't appear to be doctored, so...  
07 Q. The customer you indicate is running  
08 Identifiler on a 3100; that's one of these CE  
09 machines?  
10 A. Correct.  
11 Q. And the Identifiler is one of the ABI STR  
12 kits?  
13 A. Correct.  
14 Q. And they're running it with a polymer  
15 called POP4?  
16 A. It says that she currently is or was, hard  
17 to read that, running 3100 POP4, yes.  
18 Q. And they want to move to a different  
19 polymer, POP7?  
20 A. Correct.  
21 Q. Was this common?  
22 A. Was this common?  
23 Q. Did customers running ABI STR kits want to  
24 switch polymers?

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25 A. For non-forensic labs, it is fairly  
00033:01 common, yes.  
02 Q. And why is that?  
03 A. Because they're usually running multiple  
04 applications that require POP7, and to prevent them  
05 from having to switch polymer, they like to keep it  
06 convenient.

**10. PAGE 42:16 TO 43:01 (RUNNING 00:00:42.707)**

16 Q. Let me show you what's been marked  
17 Exhibit 4. It's a single-page document, Bates  
18 stamped LIFE-0292914.  
19 (Whereupon, Exhibit 4 was marked for  
20 identification.)  
21 THE WITNESS: Okay.  
22 MR. CARROLL: Q. Do you recognize this  
23 document?  
24 A. Because it has my name on it, I do.  
25 Q. So this was an email you authored?  
00043:01 A. It appears to be, yes.

**11. PAGE 43:15 TO 44:10 (RUNNING 00:00:53.381)**

15 Q. And you indicated that the ABI STR kit  
16 being run at Northwestern University was the  
17 Profiler Plus kit?  
18 A. Correct.  
19 Q. And that's on the 3730 machine?  
20 A. Correct.  
21 Q. And this is another case where the  
22 customer is asking about running an ABI STR kit on a  
23 machine that's not validated for that kit?  
24 A. Correct.  
25 Q. And so you went on and sent him the  
00044:01 Profiler Plus users manual to help him out?  
02 A. Yes.  
03 Q. And then you also sent the 3130 user  
04 bulletin?  
05 A. Correct.  
06 Q. And the 3130 protocols?  
07 A. Correct.  
08 Q. And then you said you tried to -- you told  
09 him to try to use the 3130 protocols as a guideline?  
10 A. Correct.

**12. PAGE 55:07 TO 55:10 (RUNNING 00:00:17.078)**

07 MR. CARROLL: Q. Well, let's go back to  
08 one of the earlier exhibits. Let's go back to  
09 Exhibit 2. You testified you wrote this email;  
10 right?

**13. PAGE 55:13 TO 55:20 (RUNNING 00:00:17.990)**

13 THE WITNESS: Yes, I wrote this email.  
14 MR. CARROLL: Q. And the subject says  
15 non-HID; right?  
16 A. Correct.  
17 Q. So you knew this was a non-HID customer?  
18 A. I knew it was -- by non-HID, as I  
19 clarified earlier, that it was a non-forensic  
20 customer, coming from not a crime lab.

**14. PAGE 55:21 TO 56:02 (RUNNING 00:00:15.750)**

21 Q. So in this case you knew that they were  
22 not doing forensic work.  
23 A. Correct.

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24 Q. And you --  
25 A. Most likely. I can't say that for sure.  
00056:01 Q. Why do you say that?  
02 A. There are universities that do crime work.

**15. PAGE 63:04 TO 64:21 (RUNNING 00:02:20.750)**

04 MR. CARROLL: Q. Ms. Bishop, the court  
05 reporter has marked as Exhibit 6, a multiple-page  
06 document, Bates stamped LIFE-0018378 to 8381.  
07 If you could take a second to look at it.  
08 A. Okay.  
09 Q. Have you seen this document before?  
10 A. Not that I recall. I'm sure I have.  
11 Q. Did you have occasion to attend HID  
12 sales/service/support/product group conference  
13 calls?  
14 A. Yes.  
15 Q. During your time at ABI?  
16 A. Yes.  
17 Q. And now, Life Tech?  
18 A. Yes.  
19 Q. And how often would these calls be?  
20 A. If I recall, they were once a month.  
21 Q. And this would be something you all called  
22 in on?  
23 A. Yes.  
24 Q. If you can turn to the page Bates stamped  
25 18380, up at the top there's a header, non-HID HID  
00064:01 calls increasing. Do you see that?  
02 A. Yes.  
03 Q. Can you read that to yourself.  
04 A. Okay.  
05 Q. Now, this call appears to be from March of  
06 2008. Do you recall whether non-HID troubleshooting  
07 calls were increasing at that time?  
08 A. Not specifically, no.  
09 Q. You'd been at the company since 2005,  
10 December I think you said?  
11 A. Yes.  
12 Q. And we saw from some of the documents  
13 marked non-HID that you had handled some of these  
14 calls?  
15 A. Yes.  
16 Q. And you continued to handle them, non-HID  
17 calls?  
18 A. Yes.  
19 Q. And when you say you can't recall whether  
20 they were increasing, you can't recall whether they  
21 were steady, increasing or unchanged?

**16. PAGE 64:23 TO 64:25 (RUNNING 00:00:04.583)**

23 THE WITNESS: According to this, it says  
24 that they were increasing. I have no reason to  
25 believe that that's not true.

**17. PAGE 65:01 TO 65:03 (RUNNING 00:00:02.922)**

00065:01 MR. CARROLL: Q. But you didn't notice  
02 it?  
03 A. Not that I recall.

**18. PAGE 65:04 TO 65:11 (RUNNING 00:00:21.062)**

04 Q. And then it goes on and it mentions bone  
05 marrow. Do you know what that refers to?  
06 A. It refers to the bone marrow in your  
07 bones.

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08 Q. I think we're talking, though, about in  
09 the context of non-HID customer calls, do you know  
10 what that is being referred to there, bone marrow?  
11 A. Probably bone marrow testing.

**19. PAGE 66:19 TO 67:09 (RUNNING 00:00:40.829)**

19 Q. Where somebody used ABI STR kits to  
20 monitor a bone marrow transplant, are you familiar  
21 with that technology?  
22 A. No knowledge of it.  
23 Q. No knowledge?  
24 A. None. Wouldn't even know how they would  
25 begin to do that.  
00067:01 Q. Do you know what Chimerism means?  
02 A. Limitedly. Can I give the precise  
03 definition of it, no.  
04 Q. What is your understanding of Chimerism?  
05 A. An individual can potentially show two  
06 different DNA profiles.  
07 Q. And that's because of the transplant?  
08 A. I'm not sure. I have limited knowledge of  
09 Chimerism.

**20. PAGE 68:17 TO 68:21 (RUNNING 00:00:09.970)**

17 Q. That same paragraph on the third page of  
18 this exhibit says, we're exploring offering an  
19 online WebEx to direct these customers to for a  
20 nominal charge. Do you see that?  
21 A. Yes.

**21. PAGE 68:22 TO 68:22 (RUNNING 00:00:01.167)**

22 Q. Was that ever developed?

**22. PAGE 69:01 TO 69:02 (RUNNING 00:00:06.359)**

00069:01 I'm not exactly sure what this is referring to, so I  
02 can't answer that question.

**23. PAGE 69:03 TO 69:15 (RUNNING 00:00:32.872)**

03 MR. CARROLL: Q. Is there something  
04 online you can direct a non-HID customer to today?  
05 A. It's not specific to non-HID customers.  
06 We provide an online training opportunity, if that's  
07 what you're asking.  
08 Q. But nothing specific for these customers?  
09 A. No.  
10 Q. And then the rest of that sentence says,  
11 this is really consuming HID tech support time and  
12 we believe it will continue. Do you see that?  
13 A. Yes.  
14 Q. Was it your impression in 2008 that  
15 non-HID calls were consuming HID tech support time?

**24. PAGE 69:18 TO 69:25 (RUNNING 00:00:28.965)**

18 THE WITNESS: There's never been a time  
19 limit around it. They are -- non-forensic or  
20 non-HID customers tend to be time-consuming because  
21 they need more assistance with the process.  
22 MR. CARROLL: Q. And because of that were  
23 proposals made on how to make this less  
24 time-consuming for tech support?  
25 A. Probably.

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**25. PAGE 75:19 TO 76:15 (RUNNING 00:00:56.939)**

19 Q. Going back to the third page of Exhibit 6,  
20 which is Bates stamped 18380, up above under the top  
21 header we talked about before the break, the last  
22 sentence of that paragraph says, once in place  
23 Jonathan will assist in advertising/posting to  
24 website, et cetera. Do you see that?  
25 A. Yes.  
00076:01 Q. Do you know what's being referred to  
02 there?  
03 A. It sounds like based on the context of the  
04 entire paragraph that it's referring to the mobile  
05 online web to the extent that it's talking about a  
06 few sentences prior.  
07 Q. And I looked on the first page for a  
08 Jonathan and I found Jonathan Tabak?  
09 A. Tabak.  
10 Q. Is that the Jonathan being referred to on  
11 the third page?  
12 A. I would assume so.  
13 Q. And do you know what his position was?  
14 A. He was in the human identity marketing  
15 group. I don't remember what his title is.

**26. PAGE 82:16 TO 83:02 (RUNNING 00:01:02.826)**

16 MR. CARROLL: Q. Ms. Shepherd (sic), the  
17 court reporter has marked as Exhibit 8, a three-page  
18 document, Bates stamped LIFE-0120080 and it goes to  
19 82.  
20 A. Okay.  
21 Q. And let's start at the bottom of the first  
22 page of Exhibit 8. Do you recognize that to be an  
23 email that you authored?  
24 A. Yes.  
25 Q. And you sent it out to Lisa Ortuno and  
00083:01 Michelle Shepherd?  
02 A. Yes.

**27. PAGE 83:07 TO 83:13 (RUNNING 00:00:17.634)**

07 Q. The next page of Exhibit 8 starts, Hi  
08 Ladies, as promised all of my open cases are in CT.  
09 What is CT?  
10 A. That refers to Case Trace.  
11 Q. And what's that?  
12 A. It was the program prior to Siebel that we  
13 used for entering customer interactions.

**28. PAGE 88:21 TO 90:03 (RUNNING 00:01:31.075)**

21 Q. Going down to the bottom of the second  
22 page of Exhibit 8, and counting up from the bottom  
23 to the second bullet point, CT232382. Do you see  
24 that?  
25 A. Uh-huh.  
00089:01 Q. There's a name Richard Chmelo, if I'm  
02 pronouncing that right?  
03 A. Correct.  
04 Q. And customer name Cygene, C-Y-G-E-N-E. Do  
05 you see that?  
06 A. Yes.  
07 Q. And you indicated in your email, non-HID  
08 user seeing imbalance across loci. Do you see that?  
09 A. Yes.  
10 Q. And do you recall this customer?  
11 A. I do actually.

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12 Q. And what do you recall?

13 A. I recall having to go into his lab. It  
14 was a unique situation; I don't tend to work with  
15 these non-forensic customers very often. They're a  
16 very small portion of my customer base, but this  
17 particular customer actually lived -- I was living  
18 in South Florida at the time. If I recall his lab  
19 was nearby. It was convenient for me just to pop  
20 in.

21 And this was a rare instance of going on  
22 site to help the customer.

23 Q. Okay. And what did you do when you were  
24 there?

25 A. I helped apparently. I don't remember the  
00090:01 specifics without seeing this little blurb here, but  
02 apparently, I helped him set up samples side-by-side  
03 with the customer.

**29. PAGE 90:23 TO 91:25 (RUNNING 00:01:15.389)**

23 Q. Ms. Shepherd, the court reporter has  
24 marked as Exhibit 9, a three-page document, Bates  
25 stamped LIFE-0214084 and it goes to 086.

00091:01 If you could take a look.

02 (Whereupon, Exhibit 9 was marked for  
03 identification.)

04 THE WITNESS: Sorry. Just to clarify, are  
05 you calling me Ms. Shepherd?

06 MR. CARROLL: Q. Did I call you  
07 Ms. Shepherd? I'm sorry. Ms. Bishop.

08 A. Okay.

09 Q. Do you recognize this document?

10 A. I recognize it because my name is on it,  
11 but I don't remember it.

12 Q. You don't recall the email?

13 A. No.

14 Q. On the from line at the top of the exhibit  
15 is Ellen J. Bishop, that's you?

16 A. Yes.

17 Q. So you authored this?

18 A. Apparently, yes.

19 Q. And to Michelle Shepherd?

20 A. Yes.

21 Q. And this was in 2008?

22 A. Okay.

23 Q. The subject line says, re, non-HID HID  
24 customer. Do you see that?

25 A. Yes.

**30. PAGE 93:08 TO 93:14 (RUNNING 00:00:18.247)**

08 Q. And then your email, which in these email  
09 strings, we have to go back to page 1, indicates you  
10 briefly spoke to the customer?

11 A. Yes.

12 Q. And that would be the Mayo Clinic?

13 A. That's what it seems to be referencing,  
14 yes.

**31. PAGE 93:18 TO 94:13 (RUNNING 00:01:02.942)**

18 Q. If you look at your email, it says that  
19 you were looking for the below information from a  
20 customer who was using a 36 centimeter with POP7 and  
21 noticed that the following adjustments to the run  
22 module improved her data. Do you see that?

23 A. Yes.

24 Q. So are you communicating there that you

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25 were trying to help out on this information and you  
00094:01 went to the data of another customer?

02 A. It appears that a customer provided me  
03 with an update on their troubleshooting with me, and  
04 that they had provided this information that the  
05 data looks good at the adjusted protocol. And that  
06 was what I was putting forth as a suggestion to the  
07 new customer.

08 Q. Okay. So is this kind of an example of  
09 what you testified to earlier this morning of where  
10 you would try to help out a customer based on  
11 perhaps results that another customer might have had  
12 with that particular protocol?

13 A. Correct.

**32. PAGE 103:06 TO 103:09 (RUNNING 00:00:13.251)**

06 Q. Ms. Bishop, the court reporter has marked  
07 as Exhibit 12, a two-page document, Bates stamped  
08 LIFE-0123797 to 798.

09 If you can take a look at that.

**33. PAGE 103:12 TO 104:10 (RUNNING 00:00:53.498)**

12 THE WITNESS: Okay.

13 MR. CARROLL: Q. Do you recognize the  
14 document?

15 A. I recognize it as having my name on it.

16 Q. And let's start with the lower email on  
17 the first page.

18 A. Okay.

19 Q. Where it says from Bishop, Ellen. That's  
20 you?

21 A. Yes.

22 Q. And you authored that to Lisa Ortuno?

23 A. Yes.

24 Q. And the subject line says, re, bone  
25 marrow?

00104:01 A. Yes.

02 Q. And you say, the customer sent in a very  
03 brief email to RN. What's RN?

04 A. RightNow, that email system as I referred  
05 to earlier.

06 Q. Customer is from the Fred Hutchinson  
07 Cancer Research Center. Do you see that?

08 A. Yes.

09 Q. And then you say, so probably diagnostic?

10 A. Yes.

**34. PAGE 104:15 TO 104:16 (RUNNING 00:00:05.010)**

15 Q. Did you indicate so probably diagnostic  
16 because of the name?

**35. PAGE 104:19 TO 104:23 (RUNNING 00:00:10.412)**

19 THE WITNESS: Because of the name of the  
20 research center?

21 MR. CARROLL: Q. Right.

22 A. Potentially. And as I look at this now,  
23 it could have been research versus diagnostic, so...

**36. PAGE 105:05 TO 105:12 (RUNNING 00:00:15.305)**

05 Q. And you authored that to Lisa Ortuno and  
06 Cortney Boccardi?

07 A. Correct.

08 Q. And you say, Hey you two, Either of you  
09 have experience with or articles related to the use

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10 of our AmpFLSTR kits on bone marrow DNA? Do you see  
11 that?  
12 A. Yes.

**37. PAGE 106:11 TO 106:18 (RUNNING 00:00:17.982)**

11 Q. Do you recall whether there was any  
12 follow-up?  
13 A. I don't recall. I have a lot of customer  
14 interactions so remembering specific instances is  
15 difficult.  
16 Q. Okay. Have you ever visited the  
17 Fred Hutchinson Cancer Research Center?  
18 A. No.

**38. PAGE 107:01 TO 107:05 (RUNNING 00:00:14.086)**

00107:01 MR. CARROLL: Q. Ms. Bishop, the court  
02 reporter has marked as Exhibit 13, a two-page  
03 document, Bates stamped LIFE-0130374 to 375.  
04 If you can take a look at that.  
05 A. Okay.

**39. PAGE 108:09 TO 108:16 (RUNNING 00:00:14.187)**

09 Q. Right, do you recall this email?  
10 A. No.  
11 Q. Any question it came to you?  
12 A. No.  
13 Q. And she says, I have this one. It's from  
14 Fred Hutchinson Cancer Institute, so it's probably a  
15 cell line authentication-type lab. Do you see that?  
16 A. Yeah.

**40. PAGE 137:06 TO 137:11 (RUNNING 00:00:25.737)**

06 MR. CARROLL: Q. Ms. Bishop, the court  
07 reporter has marked as Exhibit 20, a two-page  
08 document Bates stamped LIFE-0163960 and it goes to  
09 961.  
10 If you could take a look at it.  
11 A. Okay.

**41. PAGE 138:10 TO 138:15 (RUNNING 00:00:12.655)**

10 Q. And it says, Hi Shanin, thanks for  
11 checking on this. I'm in the process of taking care  
12 of both of these. They're both cell line  
13 authentication. I would be happy to discuss these  
14 non-HID applications with you. Do you see that?  
15 A. I do.

**42. PAGE 138:20 TO 138:21 (RUNNING 00:00:02.655)**

20 Q. Any doubt you received it?  
21 A. No.

**43. PAGE 152:18 TO 152:23 (RUNNING 00:00:26.540)**

18 MR. CARROLL: Q. Ms. Bishop, the court  
19 reporter has marked as Exhibit 24, a two-page  
20 document, Bates stamped LIFE-0023674, and it goes to  
21 75.  
22 If you can have a look at that.  
23 A. Okay.

**44. PAGE 153:17 TO 153:18 (RUNNING 00:00:02.259)**

17 Q. Any question it came to you?  
18 A. No.

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45. PAGE 155:08 TO 155:09 (RUNNING 00:00:05.121)

08 Q. Is she indicating to Lisa Ortuno that she  
09 would like her to follow up with this customer?

46. PAGE 155:12 TO 155:18 (RUNNING 00:00:19.198)

12 THE WITNESS: Yes. It appears that way to  
13 me.  
14 MR. CARROLL: Q. And was that a common  
15 occurrence during your time when Lisa Ortuno was  
16 employed at the company?  
17 A. It was common for non-forensic inquiries  
18 to get directed to Lisa Ortuno.

47. PAGE 160:17 TO 161:09 (RUNNING 00:00:51.214)

17 MR. CARROLL: Q. Ms. Bishop, the court  
18 reporter has marked as Exhibit 26, a multi-page  
19 document, Bates stamped LIFE-0249361, and it goes to  
20 364.  
21 If you can take a look at it.  
22 A. Okay.  
23 Q. I think your email starts on page 3, which  
24 would end with the number 63. It's in the middle of  
25 the page.  
00161:01 A. Yes.  
02 Q. And on the from line is Ellen Bishop?  
03 A. Yep.  
04 Q. And you authored it?  
05 A. I did.  
06 Q. And you sent it to a number of the  
07 technical support people including your supervisor,  
08 Michelle Shepherd?  
09 A. I did.

48. PAGE 162:08 TO 162:11 (RUNNING 00:00:08.807)

08 Q. And now responding back to you starting at  
09 the bottom of the first page is Melissa Kotkin. Do  
10 you see that?  
11 A. Yes.

49. PAGE 162:25 TO 163:10 (RUNNING 00:00:20.610)

25 Q. Any question you got it?  
00163:01 A. No.  
02 Q. Okay. And the first header under  
03 October 14 is Sarah Hughes at Serological Research  
04 Institute. Do you see that?  
05 A. Yes.  
06 Q. Are you familiar with that customer?  
07 A. No, not specifically.  
08 Q. Ever troubleshoot for Serological Research  
09 Institute?  
10 A. I have.

50. PAGE 163:21 TO 163:24 (RUNNING 00:00:08.260)

21 Q. And is the Serological Research Institute  
22 a non-HID account?  
23 A. They would be considered a non-HID  
24 account.

51. PAGE 164:03 TO 165:01 (RUNNING 00:00:54.897)

03 Q. And now moving down to the last entry,  
04 which actually is over on the page ending 63,  
05 there's SUNY at Stony Brook Histocompatibility. Do  
06 you see that?

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07 A. I do.  
08 Q. And do you recall this client?  
09 A. No.  
10 Q. There's a person named Serafim,  
11 S-E-R-A-F-I-M, and the last name is Maia, M-A-I-A.  
12 Do you see that?  
13 A. I do.  
14 Q. Do you recall that person?  
15 A. Not that person, no.  
16 Q. Did you have any other interactions with  
17 people at SUNY Stony Brook?  
18 A. It's possible.  
19 Q. You've troubleshooted there?  
20 A. It's possible. Not there, not physically  
21 on site, but it's possible that I've interacted  
22 either via email or phone.  
23 Q. Do you know what they do with their  
24 ABI STR kits?  
25 A. I do not.  
00165:01 Q. Okay. But they're a non-HID lab?

**52. PAGE 165:03 TO 165:03 (RUNNING 00:00:00.655)**

03 THE WITNESS: Yes.

**53. PAGE 176:17 TO 176:19 (RUNNING 00:00:03.421)**

17 Q. Does that terminology HID box mean  
18 anything to you? It does?  
19 A. Yes.

**54. PAGE 176:22 TO 176:25 (RUNNING 00:00:11.787)**

22 MR. CARROLL: Q. And what does it mean?  
23 A. Typically, when we use that term, we're  
24 referring to a 3500 instrument that's sold into a  
25 laboratory not running human identity applications.

**55. PAGE 182:06 TO 182:24 (RUNNING 00:00:53.709)**

06 MR. CARROLL: Q. Ms. Bishop, the court  
07 reporter has marked as Exhibit 35, a three-page  
08 document, Bates stamped LIFE-0317901 to 904. It's a  
09 four-page document.  
10 If you could just take a look at it.  
11 A. Okay.  
12 Q. And as an email exchange. Let's start on  
13 the third page. And that's an email from you to a  
14 Mr. Winokur, W-I-N-O-K-U-R. Do you see that?  
15 A. I do.  
16 Q. And his email is at Partners.org?  
17 A. Okay.  
18 Q. And that's April of this year?  
19 A. Yep.  
20 Q. And the subject line is ProFiler Plus on a  
21 3100?  
22 A. Okay.  
23 Q. Do you recall this email?  
24 A. More so than the previous emails.

**56. PAGE 183:17 TO 184:14 (RUNNING 00:01:04.116)**

17 Q. What about GeneMapper?  
18 A. That's the analysis software, not the  
19 software that runs the instrument.  
20 Q. Oh, okay. Got it.  
21 Is there a different data collection  
22 software for a non-HID customer than an HID  
23 customer?

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24 A. There may be a different software for  
25 sequencing versus fragment analysis, but for  
00184:01 fragment analysis, no.  
02 Q. So for a non-HID user who is going to do  
03 ABI STR kits, there's not a different data  
04 collection --  
05 A. No.  
06 Q. -- software?  
07 Okay. And this Mr. Winokur at Partners,  
08 do you know what institution he worked at?  
09 A. Not without looking at the email.  
10 Q. Okay. You can look at the front page.  
11 That might help.  
12 A. Okay.  
13 Q. Massachusetts General Hospital?  
14 A. That's what it says.

**57. PAGE 190:20 TO 190:24 (RUNNING 00:00:11.936)**

20 MR. CARROLL: Q. Ms. Bishop, the court  
21 reporter has marked as Exhibit 37, a two-page  
22 document, Bates stamped LIFE-0006088 and it ends  
23 6089.  
24 If you can take a look at that.

**58. PAGE 190:25 TO 190:25 (RUNNING 00:00:01.143)**

25 A. Okay.

**59. PAGE 191:20 TO 191:23 (RUNNING 00:00:13.376)**

20 Q. Turning now to the first page, there's an  
21 email from Shanin at the bottom to you and Lisa  
22 Ortuno. Do you see that?  
23 A. I do.

**60. PAGE 192:08 TO 193:22 (RUNNING 00:01:18.648)**

08 Q. And then Lisa writes her back and says,  
09 what is the application. Do you see that?  
10 A. I do.  
11 Q. And then she writes back and says, they're  
12 doing cell line authentication. Do you see that?  
13 A. Yes.  
14 Q. Does that help you recall this email?  
15 A. No.  
16 Q. Any question that you got it?  
17 A. No.  
18 Q. And now the top email is from Lisa to  
19 Shanin but you're copied as well. Do you see that?  
20 A. I do.  
21 Q. And Lisa says, there are a few service  
22 labs doing this. I don't know that any are using ID  
23 Plus. Identifiler, yes. Universities and  
24 companies. Your customer can try these. Clearly we  
25 cannot make a recommendation for a specific one.  
00193:01 And then she lists a number of entities. Do you see  
02 that?  
03 A. I do.  
04 Q. Do you recall receiving this email?  
05 A. Not specifically, no. I'm not sure I even  
06 paid that much attention to it when I received it in  
07 the first place.  
08 Q. Okay. Let's talk about the four entities  
09 that she lists.  
10 A. Okay.  
11 Q. Genetica DNA Labs, familiar with them?  
12 A. I've heard of them, yes.  
13 Q. Have you done any troubleshooting?

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14 A. I have.  
15 Q. And have you interacted with people in the  
16 lab?  
17 A. Via phone or email.  
18 Q. Not a visit?  
19 A. Not a visit.  
20 Q. And do you know whether they are using  
21 ABI STR kits?  
22 A. To my knowledge they are, yes.

**61. PAGE 202:21 TO 203:10 (RUNNING 00:00:47.730)**

21 MR. CARROLL: Q. Ms. Bishop, the court  
22 reporter has marked as Exhibit 40, a single-page  
23 document, Bates stamped LIFE-0027157.  
24 If you could take a look at it.  
25 A. Okay.  
00203:01 Q. Have you seen this before?  
02 A. No, not that I recall.  
03 Q. And the email is from Lisa Ortuno?  
04 A. It is.  
05 Q. And are you on the to line?  
06 A. I am.  
07 Q. With a bunch of other people?  
08 A. Yes.  
09 Q. And this is April of this year?  
10 A. It is.

**62. PAGE 203:18 TO 203:21 (RUNNING 00:00:10.841)**

18 Q. And Lisa reports to everyone that she's  
19 run STR kits and controls on the 3500 research box.  
20 Do you see that?  
21 A. I do.

**63. PAGE 204:02 TO 204:07 (RUNNING 00:00:13.645)**

02 Q. And do you recall her running these tests?  
03 A. Vaguely. I knew she was doing it.  
04 Q. And she says, this is to get a better feel  
05 for what the data looked like for our non-HID  
06 customers who want to try this. Do you see that?  
07 A. I do.

**64. PAGE 205:01 TO 205:07 (RUNNING 00:00:16.256)**

00205:01 MR. CARROLL: Q. Sure. What happened  
02 when that 3500 came on the scene, did technical  
03 support get trained for that machine?  
04 A. Of course, yes.  
05 Q. And was Lisa's testing of the machine  
06 above and beyond the training that she got for the  
07 machine?

**65. PAGE 205:09 TO 205:09 (RUNNING 00:00:00.939)**

09 THE WITNESS: It was.

**66. PAGE 239:15 TO 240:05 (RUNNING 00:00:50.731)**

15 MR. CARROLL: Q. Ms. Bishop, the court  
16 reporter has marked as Exhibit 56, a multi-page  
17 document, Bates stamped LIFE-0414250 and it goes to  
18 252.  
19 If you could have a look at that.  
20 A. Okay.  
21 Q. And this appears to be another email that  
22 you authored in 2006 to Melissa Kotkin; correct?  
23 A. Yes.  
24 Q. And the subject line is four non-HID


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25 customers. Do you see that?  
00240:01 A. It is.  
02 Q. And you say, Hi Melissa, I just copied you  
03 to four different emails that came into RightNow,  
04 all from non-HID customers. Do you see that?  
05 A. I do,

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:31:04.222)

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 **Hale, Katherine (Vol. 01) - 12/15/2011**

1 CLIP (RUNNING 00:37:49.152)

 QC020412

HALEDES

53 SEGMENTS (RUNNING 00:37:49.152)



**1. PAGE 6:08 TO 6:13 (RUNNING 00:00:16.154)**

08 Q. Dr. Hale, first thank you for being here today.  
09 Could you please state your full name for the record.  
10 A. Full name is Dr. Katherine Anne Stemke Hale.  
11 Q. Thank you. And could you also state your home  
12 address for the record.  
13 A. 5002 Stillbrook Drive, Houston, Texas 77035.

**2. PAGE 9:10 TO 9:22 (RUNNING 00:00:46.126)**

10 Q. Okay. I'm going to get some background  
11 information to start. I want to hear about what you did  
12 for your education, so can you start with college and  
13 tell me where you went to college and what degree you  
14 got there?  
15 A. I went to Rice University here in Houston. I  
16 got a triple major in biochemistry, computer science,  
17 and math science. I did my Ph.D. at UT Austin, and then  
18 I went to UT Southwestern to do a post doc. After that  
19 I was part of a -- help set up start-up company that was  
20 based in Dallas. I then moved to Houston with another  
21 small company. Then I came to M.D. Anderson. So I've  
22 been in Texas for a while.

**3. PAGE 12:07 TO 12:25 (RUNNING 00:00:47.788)**

07 Q. And you're still employed by M.D. Anderson?  
08 A. Still employed by M.D. Anderson, yes.  
09 Q. When you came to M.D. Anderson, what was your  
10 first title when you came here?  
11 A. Instructor.  
12 Q. Instructor. And what were you an instructor  
13 in?  
14 A. I was an instructor in the department of  
15 systems biology. It was called molecular therapeutics  
16 at that point.  
17 Q. And what did you do for -- what did you do as  
18 an instructor?  
19 A. I worked -- I still work in the Kleberg Center  
20 for molecular markers, looking at primarily DNA  
21 biomarkers that can help predict response to therapy and  
22 appropriately direct people into the -- into the correct  
23 therapy.  
24 Q. And you still work as an instructor?  
25 A. Yes.

**4. PAGE 13:06 TO 13:13 (RUNNING 00:00:22.337)**

06 Q. Have the duties and what you do as an  
07 instructor changed at all since you've been here?  
08 A. Yes. I also now am the director for the  
09 characterized cell line core, which is a CCSG funded  
10 core facility, cancer center support grant.  
11 Q. Thank you.  
12 A. And that includes characterization of cell  
13 lines.

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page 1

**PTX1351**

PTX1351\_0001

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**5. PAGE 13:14 TO 13:15 (RUNNING 00:00:09.461)**

14 Q. And when did you become the director there?  
15 A. 2008, approximately. I was codirector.

**6. PAGE 14:07 TO 14:13 (RUNNING 00:00:23.082)**

07 Q. We may. So could you tell me a little bit  
08 about the work you do in your position as director.  
09 Just sort of describe your work for me.  
10 A. So for the -- as director of the characterized  
11 cell line core I direct two people who are paid for by  
12 the core. We do characterization of cell lines using  
13 STR.

**7. PAGE 14:14 TO 15:06 (RUNNING 00:00:51.902)**

14 Q. Could you describe the characterization of cell  
15 lines? Can you kind of tell me what that is. I  
16 apologize. I'm not a scientist, unlike many people in  
17 this room, so I have a lot of questions when it comes to  
18 these things.  
19 A. So characterization of cell lines can be done  
20 in a variety of different methods. We look at the  
21 mutational profile of a cell line to help researchers  
22 figure out what the appropriate cell line is to use for  
23 whatever process.  
24 This is at the DNA level, also sometimes at  
25 the RNA and the protein level so that the researchers  
00015:01 choose the correct cell line for their research.  
02 We also validate cell lines using STR to  
03 make sure that the cell line that the people are using  
04 is the one that they're expecting that they're using.  
05 That's part of what I do for the characterized cell line  
06 core.

**8. PAGE 16:21 TO 16:25 (RUNNING 00:00:09.390)**

21 Q. And you said you're using a PCR technology?  
22 A. Yes.  
23 Q. And what do you mean by that?  
24 A. I'm using the Applied Biosystems identifiler  
25 kit.

**9. PAGE 17:07 TO 17:20 (RUNNING 00:00:35.723)**

07 Q. (BY MS. TROUPIS) So you use identifiler as  
08 your PCR technology?  
09 A. Correct.  
10 Q. And how long have you used identifiler?  
11 A. I believe we started using it 2008, 2009.  
12 2009.  
13 Q. Okay. And prior to that did you use any  
14 product?  
15 A. No. No.  
16 Q. What changed in 2008 or 2009 that made you  
17 start using this?  
18 A. That is when we set up this characterized cell  
19 line core, and that's when I needed to start validating  
20 cell lines.

**10. PAGE 23:20 TO 23:23 (RUNNING 00:00:16.510)**

20 Q. Do you know if anyone else at M.D. Anderson  
21 uses STR kits?  
22 A. I do not know of anyone else at M.D. Anderson  
23 who uses STR kits, otherwise they wouldn't come to me.

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**11. PAGE 23:24 TO 24:04 (RUNNING 00:00:11.475)**

24 Q. And you want to earn your money, right, since  
25 they're paying you. Now, you stated that you use the  
00024:01 STR kits to validate cell lines?  
02 A. Yes.  
03 Q. Do you use them for any other purposes?  
04 A. No.

**12. PAGE 24:05 TO 24:08 (RUNNING 00:00:15.823)**

05 Q. Do you know if anyone else at M.D. Anderson  
06 uses STR kits for any purposes?  
07 A. I don't know if anyone else uses STR kits,  
08 otherwise I would have asked them for help.

**13. PAGE 24:09 TO 24:25 (RUNNING 00:00:55.138)**

09 Q. So you stated you started using the STR kits in  
10 approximately 2008, 2009?  
11 A. Yeah. Yes.  
12 Q. And at the time you're running -- you're  
13 validating the cell lines. About how many kits do you  
14 use -- did you use the first year you were using them?  
15 A. Probably just one.  
16 Q. And how many validations of cell lines were you  
17 doing then?  
18 A. Probably less than 500. Maybe less than a  
19 hundred.  
20 Q. And has that number changed since then?  
21 A. Yes.  
22 Q. Could you sort of give me an idea of how it  
23 changed over this three- to four-year period?  
24 A. It probably doubled every year, but I'd have to  
25 look at my records to know exactly how many.

**14. PAGE 25:01 TO 25:04 (RUNNING 00:00:12.029)**

00025:01 Q. So today how many kits are you using per year?  
02 A. Probably two to three kits per year, if I had  
03 to guess. But I could ask the person that I bought them  
04 from.

**15. PAGE 25:05 TO 25:10 (RUNNING 00:00:13.876)**

05 Q. I will take your word for the two to three  
06 right now. And about how many tests are you doing per  
07 year? About how many validations are you doing per  
08 year?  
09 A. Probably closer to a thousand, if I had to  
10 guess.

**16. PAGE 25:11 TO 25:12 (RUNNING 00:00:02.749)**

11 Q. Do you do any forensic work in your lab?  
12 A. No.

**17. PAGE 25:13 TO 26:11 (RUNNING 00:01:06.636)**

13 Q. Do you do any work for anyone outside of M.D.  
14 Anderson?  
15 A. Yes.  
16 Q. What kind of work do you do for people outside  
17 of M.D. Anderson?  
18 A. I can accept samples from researchers outside  
19 of M.D. Anderson, and I do the same sort of analysis as  
20 I do for people in M.D. Anderson.  
21 Q. So you would validate cell lines for people  
22 outside of M.D. Anderson?  
23 A. Yes.

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24 Q. Is this something you do a lot?  
25 A. No.  
00026:01 Q. About how many times this last year have you  
02 done this?  
03 A. Maybe 50 samples outside of M.D. Anderson.  
04 Q. And who would you typically do an outside  
05 sample for?  
06 A. Generally researchers who used to be at M.D.  
07 Anderson and know of my core.  
08 Q. Has anyone outside of M.D. Anderson ever asked  
09 you to do something with an STR kit that is not  
10 verifying a cell line?  
11 A. No.

**18. PAGE 26:12 TO 30:03 (RUNNING 00:05:11.148)**

12 Q. Now, you stated before that when you started  
13 using the STR kits, the identifiler kits, something  
14 about you had trouble?  
15 A. Yes.  
16 Q. Am I correct in that?  
17 A. Yes.  
18 Q. Can you describe what sort of trouble you had  
19 when you were starting to use them?  
20 A. I had variabilities. Sometimes they would  
21 work. Sometimes I would get signal. Sometimes I would  
22 not.  
23 Q. And you said you had to go outside M.D.  
24 Anderson to get help with that?  
25 A. Yes.  
00027:01 Q. And where did you go to get help with that?  
02 A. Applied Biosystems. Life Technologies. The  
03 makers of the kit.  
04 Q. And what did you ask them to do?  
05 A. I asked for help analysis of why they had --  
06 why I was having variability.  
07 Q. And did they provide you with help?  
08 A. Yes.  
09 Q. Who did you initially talk to when you talked  
10 to someone at Applied Biosystems or Life Tech?  
11 A. I believe I first contacted the sales rep, and  
12 then eventually I would just call the 1-800 number for  
13 Applied Biosystems.  
14 Q. And who was the sales rep at the time?  
15 A. Clark Eason, I believe. He's still the sales  
16 rep. I think I called Alan Silverman first.  
17 Q. Was he a sales rep?  
18 A. He was a sales rep, but he was not really  
19 associated with this product, so he referred me to other  
20 people within the company.  
21 Q. And Clark Eason or Alan Silverman, whoever you  
22 first spoke with, what did they tell you to do?  
23 A. They did not have any information on the  
24 product. They referred me to the web site and to people  
25 within Applied Biosystems.  
00028:01 Q. You said they did not have any information on  
02 the product. You mean, they didn't know how it worked,  
03 or what do you mean by they didn't have any information?  
04 A. They did not know the product. They didn't  
05 have information on how to use the product. All they  
06 could really do is give me a price quote, not  
07 troubleshooting.  
08 Q. And they sent you to the general number to get  
09 help, or how did they refer you back to someone who  
10 helped?  
11 A. I don't remember exactly. I do know that at  
12 one point I went on the web site and followed all the

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13 standard -- what kit -- what product do you have  
14 problems with, and eventually I got a phone number.  
15 Q. And that was the 1-800 number?  
16 A. Yes.  
17 Q. Now, when you talked to the sales rep at first,  
18 did you tell him specifically what your problem was?  
19 A. No, not really.  
20 Q. Now, you've called this 1-800 number. When you  
21 called the 1-800 number, did you get the help you  
22 needed?  
23 A. Yes.  
24 Q. Can you describe what happened when you called  
25 the 1-800 number for me?  
00029:01 A. I mentioned that I was having variability. The  
02 person worked with me and also with the DNA analysis  
03 core that was running my samples to determine where the  
04 problem could be. We helped troubleshoot.  
05 It was a mixture of partially of my  
06 sequencing reactions being the wrong DNA concentrations  
07 and partially the DNA analysis core were using the wrong  
08 capillaries in their machine.  
09 Q. And do you remember who helped you figure this  
10 problem out?  
11 A. I want to say the person's name was Lisa. But  
12 that's in the e-mails.  
13 Q. And we'll get to those in a little bit. Don't  
14 worry. You said Lisa helped you out. Did you tell  
15 her -- when you told her your problem, what did you tell  
16 her your problem was?  
17 A. That I was having variability.  
18 Q. And did she know what you needed -- scratch  
19 that.  
20 She knew you were using the identifiler,  
21 correct?  
22 A. Correct.  
23 Q. Did she know for what purposes you were using  
24 the identifiler?  
25 A. Yes.  
00030:01 Q. And so she knew you were doing cell line -- or  
02 validation of the cells?  
03 A. Yes.

**19. PAGE 30:05 TO 30:11 (RUNNING 00:00:22.772)**

05 Q. (BY MS. TROUPIS) How do you know she knew you  
06 were doing that?  
07 A. Because I commented that this was one of the  
08 first times when I dialed a 1-800 number and instantly  
09 got a person as opposed to the phone tree. And that's  
10 when I found out that this kit was primarily used for  
11 forensics, and that was required.

**20. PAGE 30:12 TO 30:19 (RUNNING 00:00:22.962)**

12 Q. What do you mean it was required?  
13 A. If you have a problem with forensics, you  
14 needed to instantly get a hold of someone to  
15 troubleshoot.  
16 Q. Did you volunteer what you were doing with the  
17 kit, or did you get asked what you were doing with the  
18 kit?  
19 A. I volunteered.

**21. PAGE 30:20 TO 31:20 (RUNNING 00:01:39.557)**

20 Q. Was this the only time you had any problem?  
21 A. No. I had problems since.  
22 Q. What kind of problems have you had since?

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23 A. It was not necessarily myself, because at that  
24 point I had a technician who helped run the process.  
25 We determined that it was a change in the  
00031:01 capillaries to something that was done in the DNA  
02 analysis core. They upgraded their capillaries, and  
03 suddenly things were working too well, so we needed to  
04 change our DNA concentration to be back in a good range  
05 for the machine.  
06 Q. When you had this problem, how did you go about  
07 getting it solved?  
08 A. Again, we called Applied Biosystems, explained  
09 that we were having a problem again with variability;  
10 and as I said, I was not the person directly talking,  
11 but I got everything from my technician, that she  
12 e-mailed and called -- I'm not sure if she e-mailed. I  
13 know she called the person at Applied Biosystems.  
14 Q. And who was the technician?  
15 A. Her name is Vivian Gabisi, G-a-b-a-i-s-i, I  
16 believe.  
17 Q. So she -- Vivian Gabisi explained the problem  
18 with the variability to the person she got on the  
19 phone --  
20 A. Yes.

**22. PAGE 31:22 TO 32:16 (RUNNING 00:01:26.699)**

22 Q. (BY MS. TROUPIS) She explained the problem,  
23 and then what happened?  
24 A. She explained the problem. We worked with the  
25 DNA analysis core and Applied Biosystems to look at the  
00032:01 data and determine what the problem was.  
02 Q. You say they looked at the data, correct?  
03 A. Yes.  
04 Q. So did they know what you were using the data  
05 for?  
06 A. I do not know if Vivian mentioned that -- I  
07 don't know. Sorry. I don't know.  
08 Q. Would you expect her to have mentioned it?  
09 A. I don't know.  
10 Q. Would you have mentioned it?  
11 A. I would have.  
12 Q. And how did they solve the problem?  
13 A. They worked with us. They worked with the DNA  
14 analysis core to determine what, if any, settings needed  
15 to be changed on the machine or what, if any,  
16 modifications we needed to do for our PCR.

**23. PAGE 33:07 TO 33:12 (RUNNING 00:00:14.898)**

07 Q. So before you stated that you're using  
08 approximately 2 to 3 kits per year now?  
09 A. Probably, maybe more.  
10 Q. Somewhere around 2 to 3. We'll say that. And  
11 they are all the identifiler kits?  
12 A. Correct.

**24. PAGE 38:22 TO 40:19 (RUNNING 00:02:19.984)**

22 Q. I have marked as Exhibit 2 a file received by  
23 Promega from M.D. Anderson. I don't have a Bates number  
24 on it, but it was received by Promega from M.D. Anderson  
25 pursuant to a third party subpoena.  
00039:01 Ms. Hale, you've been handed Exhibit 2,  
02 which is a document M.D. Anderson produced in this case.  
03 Can you take a minute to look at it and check out what  
04 it is.  
05 A. I have looked at it.  
06 Q. Do you recognize Exhibit 2?

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07 A. I recognize Exhibit 2.  
08 Q. Can you tell me what Exhibit 2 is.  
09 A. Exhibit 2 is the web site that we are planning  
10 to put up. It is not yet live yet. This is the next  
11 version of our web site.  
12 Q. And do you know who authored this?  
13 A. It was authored primarily by myself with input  
14 from Vivian Gabisi and Carolyn Duff.  
15 Q. And who is Carolyn Duff?  
16 A. Carolyn Duff is someone who works for the CCSG  
17 to help set up web sites, so her comments were primarily  
18 technical with regards to the look and feel of the web  
19 site.  
20 Q. And if you can take a look at the bottom of the  
21 first page.  
22 A. Uh-huh.  
23 Q. And it states that, "We provide testing of STR  
24 on cell lines using the Applied Biosystems ampFLSTR  
25 identifier kit"?  
00040:01 A. Yes.  
02 Q. That's how you do all your testing on the cell  
03 line?  
04 A. For STR testing, yes.  
05 Q. Thank you. And this -- when it becomes part of  
06 the web site, is that part of the external M.D. Anderson  
07 web site or part of an internal M.D. Anderson web site?  
08 A. It will be both internal and external.  
09 Q. Will there be any difference between the  
10 internal and external?  
11 A. No.  
12 Q. So this will be available to the public?  
13 A. Yes.  
14 Q. And you stated before that you do do some work  
15 for people outside of M.D. Anderson, correct?  
16 A. Yes.  
17 Q. So someone could see this and come to you, if  
18 they had potential work for you?  
19 A. Yes.

**25. PAGE 47:11 TO 48:02 (RUNNING 00:00:37.925)**

11 Q. (BY MS. TROUPIS) I've marked as Exhibit 5 a  
12 file received from Promega -- or by Promega from M.D.  
13 Anderson. It hasn't got a Bates number on it, but it  
14 was received pursuant to a third-party subpoena.  
15 Dr. Hale, you've been handed what has been  
16 marked as Exhibit No. 5. Could you take a look at this  
17 document?  
18 A. Yes.  
19 Q. And do you recognize this document?  
20 A. Yes.  
21 Q. And could you tell me what this document is?  
22 A. This is an e-mail from Lisa Ortuno, so now I  
23 remember her last name.  
24 Q. Could we stop there for a second.  
25 The Lisa that we were referring to earlier  
00048:01 in this deposition is named Lisa -- that is Lisa Ortuno,  
02 correct?

**26. PAGE 48:04 TO 48:04 (RUNNING 00:00:00.273)**

04 A. Yes.

**27. PAGE 48:05 TO 48:24 (RUNNING 00:00:53.546)**

05 Q. (BY MS. TROUPIS) There is someone cc'd on this  
06 named Phillip Czar.  
07 A. Yes.

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08 Q. Do you know who Phillip Czar is?  
09 A. Yes.  
10 Q. Who is Phillip Czar?  
11 A. Phillip Czar is the sales rep for Applied  
12 Biosystems Life Technologies.  
13 Q. And how do you know Mr. Czar?  
14 A. I knew him when he was a rep for a different  
15 company. I have forgotten which company. Sh. Don't  
16 tell him. But he reintroduced himself saying that he  
17 was the Life Technologies sales rep.  
18 Q. And can you tell me about this e-mail?  
19 A. This was an e-mail out of the blue saying,  
20 hello, wanted to check in.  
21 Q. Is it something you commonly received from  
22 Ms. Artuno?  
23 A. No. This was the only time I believe I  
24 received such an e-mail.

**28. PAGE 48:25 TO 49:07 (RUNNING 00:00:25.590)**

25 Q. Now, Mr. Czar who is cc'd on this -- does he  
00049:01 know what kind of work you were doing at M.D. Anderson?  
02 A. I don't -- I never talked to him about it in  
03 particular.  
04 Q. Was there any reason why you did not talk to  
05 him about it?  
06 A. Because I was busy and I never touch base with  
07 him. We had no reason to talk.

**29. PAGE 49:11 TO 50:18 (RUNNING 00:01:22.551)**

11 Q. I've marked as Exhibit 6 a file received by  
12 Promega from M.D. Anderson. It doesn't have a Bates  
13 number, but it was received by Promega from M.D.  
14 Anderson pursuant to a third-party subpoena.  
15 You've been handed Exhibit 6. Could you  
16 take a minute to look it over.  
17 A. Yes.  
18 Q. This appears to be an e-mail dated April 11,  
19 2008 with the subject: Fingerprinting kit. Correct?  
20 A. Correct.  
21 Q. Do you recognize this document?  
22 A. Yes.  
23 Q. And what is this document?  
24 A. This is a document that I got from Clark with  
25 regards to either -- I don't remember if it's a phone  
00050:01 call or a -- when he just stopped by and visits asking  
02 about using kits for STR identification.  
03 Q. And what do you mean STR identification?  
04 A. Identification of cell lines using STR.  
05 Q. And the Clark you were referring to was Clark  
06 Eason, correct?  
07 A. Clark Eason.  
08 Q. And before you stated that Clark Eason is a  
09 sales representative?  
10 A. Correct.  
11 Q. And this would be the same Clark Eason we  
12 discussed earlier?  
13 A. The same Clark Eason.  
14 Q. The first line, it says, "The kit you've chosen  
15 would be an appropriate solution for your requirements."  
16 Correct?  
17 A. Yes.  
18 Q. And by your requirements, what does Clark mean?

**30. PAGE 50:21 TO 50:22 (RUNNING 00:00:02.124)**

21 Q. (BY MS. TROUPIS) Do you know what Mr. Clark

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22 means by this?

**31. PAGE 50:24 TO 51:05 (RUNNING 00:00:17.901)**

24 Q. (BY MS. TROUPIS) Go ahead and answer, if you  
25 can.  
00051:01 A. Yes. I would have called him and asked is the  
02 kit that I've chosen appropriate for cell line  
03 identification.  
04 Q. And he told you via this e-mail that it was  
05 proper for your use?

**32. PAGE 51:07 TO 51:17 (RUNNING 00:00:42.006)**

07 Q. (BY MS. TROUPIS) Go ahead and answer.  
08 A. Yes.  
09 Q. And did you order kits?  
10 A. Yes.  
11 Q. How many kits did you order? Do you know?  
12 A. Probably one initially, after receiving this  
13 e-mail, but many subsequent.  
14 Q. So just -- I just want to go back over and make  
15 sure I understand correctly. Mr. Eason knew your  
16 requirements for cell line verification, correct?  
17 A. Yes.

**33. PAGE 51:19 TO 51:23 (RUNNING 00:00:12.304)**

19 A. Yes.  
20 Q. (BY MS. TROUPIS) And after knowing your  
21 requirements, he stated that the kit you've chosen will  
22 be an appropriate solution for your requirements,  
23 correct?

**34. PAGE 51:25 TO 52:03 (RUNNING 00:00:05.229)**

25 A. Yes.  
00052:01 Q. (BY MS. TROUPIS) And what kit had you chosen  
02 at that point?  
03 A. The identifier kit.

**35. PAGE 52:10 TO 53:05 (RUNNING 00:01:05.215)**

10 Q. I have marked as Exhibit 7 a file received by  
11 Promega from M.D. Anderson. It hasn't got a Bates  
12 number on it, but it was received pursuant to a third  
13 party subpoena.  
14 Dr. Hale, I've given you what has been  
15 marked as Exhibit 7, which was produced by M.D. Anderson  
16 in this case.  
17 This is an e-mail -- or appears to be an  
18 e-mail with a subject line FW: Data from M.D. Anderson,  
19 and is dated February 22nd, 2010.  
20 Could you take a look at this e-mail for  
21 me, please.  
22 A. Yes.  
23 Q. Do you recognize this document?  
24 A. I recognize this document.  
25 Q. And could you tell me about this document?  
00053:01 A. This is a document that Vivian Gabisi forwarded  
02 to me with regards to trouble that we were having with  
03 the STR identifier kit and then data that was received  
04 from our core, so injection of those samples onto their  
05 machine.

**36. PAGE 54:25 TO 55:20 (RUNNING 00:00:39.255)**

25 Q. It's from HIDTechSupport. And the e-mail  
00055:01 address is HID.TechSupport@lifetech.com. Do you see  
02 that?

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03 A. Yes, I see that.  
04 Q. Is that one person, to your knowledge, or is  
05 that someone else?  
06 A. I have no idea.  
07 Q. If you go to the end of that e-mail, I see that  
08 it's signed Lisa Ortuno?  
09 A. Yes.  
10 Q. Would this e-mail have been from Lisa Ortuno?  
11 A. That would make sense.  
12 Q. In the CC line there are several people listed.  
13 I see Phillip Czar.  
14 A. Uh-huh.  
15 Q. This would be the same Phillip Czar that we  
16 talked about?  
17 A. Yes.  
18 Q. The next person is Gabriel Feltner. Do you  
19 know who Gabriel Feltner is?  
20 A. No.

**37. PAGE 56:07 TO 56:14 (RUNNING 00:00:11.536)**

07 Q. (BY MS. TROUPIS) Now, you had these problems  
08 the second time. These are the second set of problems  
09 that you described before in the deposition.  
10 A. Yes.  
11 Q. And you've already stated that you believe this  
12 e-mail is discussing those problems the second time,  
13 correct?  
14 A. Yes.

**38. PAGE 56:17 TO 56:20 (RUNNING 00:00:08.920)**

17 Q. (BY MS. TROUPIS) When they were answering your  
18 problems -- or they were discussing your problems in  
19 this e-mail, do you believe they would have known what  
20 you were using the identifier kit for?

**39. PAGE 56:23 TO 57:01 (RUNNING 00:00:06.973)**

23 A. I don't know.  
24 Q. (BY MS. TROUPIS) Would you expect they knew  
25 what problems -- or what you were using the identifier  
00057:01 kit for?

**40. PAGE 57:03 TO 57:03 (RUNNING 00:00:00.476)**

03 A. I expect they would know.

**41. PAGE 57:03 TO 57:03 (RUNNING 00:00:00.483)**

03 A. I expect they would know.

**42. PAGE 57:06 TO 58:14 (RUNNING 00:01:51.277)**

06 Q. (BY MS. TROUPIS) Okay. I've marked as Exhibit  
07 8 a file received by Promega from M.D. Anderson. It  
08 doesn't have a Bates number, but it was received  
09 pursuant to a third-party subpoena.  
10 Dr. Hale, you've been handed what has been  
11 marked as Exhibit 8. It appears to be an e-mail with  
12 the subject line: Data from M.D. Anderson, dated  
13 February 23rd, 2010.  
14 If you could take a look at this e-mail for  
15 me.  
16 A. Yes.  
17 Q. Do you recognize this document?  
18 A. Yes.  
19 Q. Could you tell me what this document is?  
20 A. This is a follow-up from the previous e-mail  
21 where it looks like problems were resolved.

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22 Q. And by previous e-mail do you mean Exhibit 7?  
23 A. Yes.  
24 Q. And I see on the top that the e-mail is from  
25 HIDTechSupport to you, correct?  
00058:01 A. Yes.  
02 Q. And although the "from" says HIDTechSupport,  
03 the e-mail appears to be signed by Lisa M. Artuno,  
04 correct?  
05 A. Yes.  
06 Q. And so you stated just now that the problem had  
07 been solved, correct?  
08 A. Yes.  
09 Q. And this e-mail was Lisa telling you that the  
10 problem had been -- or Ms. Artuno telling you that the  
11 problem had been solved?  
12 A. It looks like there are still problems, but I  
13 believe that they were on the right track, yes. It  
14 allowed us to solve the problem.

**43. PAGE 61:07 TO 62:05 (RUNNING 00:01:26.680)**

07 Q. Okay. I've marked as Exhibit 10 a file  
08 received by Promega from M.D. Anderson. It does not  
09 have a Bates number, but it was received pursuant to a  
10 third-party subpoena.  
11 It appears to be an e-mail with the subject  
12 line, "Re: Follow-up to WebEx" dated February 6, 2009.  
13 Dr. Hale, you've been handed what has been  
14 marked Exhibit 10. It appears to be an e-mail. Could  
15 you take a moment to look at this document.  
16 A. Uh-huh. Okay.  
17 Q. Okay. Do you recognize this document?  
18 A. I recognize this document.  
19 Q. Can you tell me what this document is?  
20 A. This was a document that was sent after the  
21 WebEx training.  
22 Q. And why did you send this e-mail?  
23 A. I was interested in buying the GeneMapper  
24 software myself because I was using software that was  
25 given to me by the core facility, the DNA analysis core  
00062:01 facility.  
02 Q. And why did you want this for yourself?  
03 A. I thought it might be good to have a copy that  
04 didn't have some of the problems that our copy has. We  
05 can't delete data.

**44. PAGE 65:13 TO 67:21 (RUNNING 00:03:02.388)**

13 Q. When you first put in the validation system you  
14 used, did you get trained at all?  
15 A. I believe, yes. I contacted Applied  
16 Biosystems, and I had an informal walk-through of the  
17 software without being charged for it.  
18 Q. And by informal walk-through, what do you mean?  
19 A. I mean that I contacted someone, Lisa, who then  
20 helped me understand the GeneMapper program at -- just  
21 at the get-it-up-and-running level without learning more  
22 about some of the more advanced aspects of analysis of  
23 samples.  
24 Q. And did she do this remotely or in person?  
25 A. Remotely. So that might be the follow-up of  
00066:01 WebEx. It might be that she did a WebEx with just me  
02 and then later on I paid for a second training.  
03 Q. And going back to when you were doing it the  
04 first time, this walk-through you described, you said  
05 you did it remotely, would that have been on the  
06 computer or just over the phone, or how did you do it?

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07 A. It was on the computer. I know this.  
08 Q. And how do you know this?  
09 A. Because that particular computer is not hooked  
10 up to the Internet. I had to go through special hoops  
11 to log it onto our web and then take it off after the  
12 training.  
13 Q. And could you sort of describe the training  
14 that you did at this remote time?  
15 A. That was awhile ago, so we -- I'm sure we  
16 looked at the data, data that was on the screen, and  
17 then Lisa described what a pullup peak is, described  
18 some of the information about the standards that are  
19 used, went through some of the things you have to worry  
20 about with when you do an actual run that you have to  
21 worry that the standard curve looks good. You have to  
22 worry that your samples look good.  
23 Q. And would she have known what you were  
24 ultimately going to be using the software for?  
25 A. When she talked to me, yes.  
00067:01 Q. So what did she know you were going to be using  
02 the software for?  
03 A. Cell line identification.  
04 Q. So you did this initial informal walk-through  
05 with Ms. Ortuno, and then you said you had Ms. Gabisi  
06 also do training?  
07 A. Yes.  
08 Q. That would have been later after this?  
09 A. Yes.  
10 Q. How much later?  
11 A. Probably about a year later. Six months to a  
12 year.  
13 Q. And would it have been similar training to what  
14 you received?  
15 A. I was not present, but I believe it was more  
16 extensive because the first one was informal and the  
17 second one we paid for.  
18 Q. And do you know who did the second training  
19 with Ms. Gabisi?  
20 A. I believe it was Lisa, but I'm not entirely  
21 certain.

**45. PAGE 68:14 TO 69:03 (RUNNING 00:00:43.678)**

14 Q. If you could go to the second page of Exhibit  
15 10, near the top there appears to be an e-mail dated  
16 February 6, 2009 --  
17 A. Uh-huh.  
18 Q. -- sent at 1:11 p.m. Do you see that?  
19 A. Yes.  
20 Q. Could you look at that for a moment. The  
21 second paragraph of that states, "I have been going over  
22 my notes and gathering the names of the other cell line  
23 ID people I have been working with. I am checking with  
24 them to see if they would be interested in working with  
25 you. When I hear back, I'll let you know."  
00069:01 Do you see that?  
02 A. Yes.  
03 Q. What is Ms. Artuno talking about there?

**46. PAGE 69:06 TO 70:03 (RUNNING 00:01:15.025)**

06 A. We, because we were looking at many STR  
07 profiles, the cell lines, we're developing a program  
08 that would do the matching of STR profiles against the  
09 database.  
10 And at one point I was considering  
11 talking -- or I mentioned that we were doing this. And

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12 I was considering talking with Applied Biosystems to see  
13 if they were interested in that matching algorithm.

14 But we determined that we really should  
15 patent this STR algorithm. I, therefore, didn't go any  
16 further, and I never showed them any of the actual  
17 algorithms. And that's why I never responded to her  
18 e-mails.

19 Q. What do you mean responded to her e-mails?

20 A. I never responded saying what people we were  
21 interacting with. I never said who is the algorithm. I  
22 never followed up any further.

23 Q. And did Ms. Artuno ever send you any names of  
24 people who were doing cell line identification?

25 A. No, I don't think so. I think that might have  
00070:01 been one of the e-mails touching base again that the  
02 e-mail out of the blue -- it might have had something to  
03 do with this particular process. Exhibit 5.

**47. PAGE 76:16 TO 77:18 (RUNNING 00:01:17.581)**

16 Dr. Hale, you have been handed what has  
17 been marked as Exhibit 14. It appears to be an e-mail  
18 with the subject line: "Re: Data: Meeting  
19 rescheduled: GM 4.0 Quick Analysis M.D. Anderson,"  
20 dated January 27, 2010.

21 In the "from" line I have Lisa Ortuno and  
22 to Katherine Stemke Hale, ccing Vivian Gabisi?

23 Could you take a look at this document.

24 A. I read it.

25 Q. Do you recognize this document?

00077:01 A. I recognize this document.

02 Q. And what is this document?

03 A. This is a document from Lisa to me asking about  
04 potentially setting up a seminar, presumably at M.D.  
05 Anderson.

06 Q. And what seminar would this be?

07 A. We never set it up.

08 Q. You never set it up. What were you talking  
09 about setting up a seminar on?

10 A. We would be talking about a seminar on STR  
11 analysis.

12 Q. And that would be STR analysis using Life Tech  
13 kits?

14 A. One would presume so.

15 Q. And why did you want to set up a seminar?

16 A. She wanted to set up a seminar because I  
17 mentioned that I have a lot of customers who were  
18 looking at STR profiles for cell line identification.

**48. PAGE 77:19 TO 78:03 (RUNNING 00:00:44.100)**

19 Q. Did you ever talk to anyone else at Life Tech  
20 or Applied Biosystems about setting up this seminar?

21 A. No. But I should have done it.

22 Q. Did you ever discuss this with Ms. Artuno  
23 beyond this e-mail?

24 A. No. I don't recall discussing it past this  
25 e-mail.

00078:01 Q. Did you discuss anything similar with anyone  
02 else from Life Tech ever?

03 A. No, I don't think so.

**49. PAGE 85:08 TO 85:25 (RUNNING 00:00:52.664)**

08 Q. And is there any reason why not?

09 A. Yes.

10 Q. Could you tell me what that reason is?

11 A. The reason that we are here. We hired someone.

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12 He started work, and then we decided that we wanted to  
13 put things on hold to determine if there were any  
14 problems before we pursued any commercial STR matching  
15 program.

16 Q. And what do you mean by problems?

17 A. Any legal problems associated with the reason  
18 I'm here.

19 Q. And what would that reason be?

20 A. Promega and Applied -- Life Technologies'  
21 potential conflict of interest on a patent or IPO. So  
22 we wanted to find out what was going on.

23 Q. So you are aware that there are patent issues  
24 between --

25 A. One would presume that is the reason I am here.

50. PAGE 95:21 TO 96:03 (RUNNING 00:00:20.515)

21 Q. Just a second here. Now, so when you're  
22 performing cell line validation, are you at all  
23 interested in the source?

24 A. We are interested in matching the cell line to  
25 the sample. So we don't care who the patient -- I don't  
00096:01 care who the patient is. And I'm not allowed to care.

02 Q. So you don't care about the identity of the  
03 person?

51. PAGE 96:05 TO 96:05 (RUNNING 00:00:00.213)

05 A. No.

52. PAGE 96:06 TO 96:07 (RUNNING 00:00:02.384)


06 Q. (BY MS. TROUPIS) You're not trying to  
07 determine the identity of the person?

53. PAGE 96:09 TO 96:11 (RUNNING 00:00:06.121)


09 A. I'm not trying to identify the identity of the  
10 person. I'm attempting to identify the identity of the  
11 cell line.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:37:49.152)

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 Kotkin, Melissa (Vol. 01) - 12/06/2011

1 CLIP (RUNNING 00:35:51.080)

 QC020412

KOTKDES

42 SEGMENTS (RUNNING 00:35:51.080)



1. PAGE 6:01 TO 6:21 (RUNNING 00:00:48.237)

00006:01 THE VIDEOGRAPHER: This is the deposition of  
02 Melissa Kotkin being taken in the matter of Promega  
03 Corporation versus Life Technologies Corporation.  
04 The date is December 6, 2011. The time is 8:24 a.m.  
05 Would counsel please introduce themselves.  
06 MR. KARGE: Stewart Karge on behalf of Promega.  
07 MR. HOWERTON: Thomas Howerton on behalf of  
08 Promega.  
09 MR. MCCARTHY: Michael McCarthy on behalf of  
10 Defendant Life Technologies Corporation.  
11 THE COURT: And will the Court Reporter please  
12 swear in the witness.  
13 MELISSA KOTKIN  
14 having been first duly sworn, testified as follows:  
15 THE WITNESS: I do.  
16 DIRECT EXAMINATION  
17 BY MR. KARGE:  
18 Q. Good morning, Ms. Kotkin. My name is  
19 Stewart Karge. I represent Promega Corporation.  
20 Have you ever been deposed before?  
21 A. Yes, I have.

2. PAGE 7:24 TO 11:06 (RUNNING 00:04:44.560)

24 Q. Let's begin with your educational background,  
25 please. Can you give me a brief synopsis of your  
00008:01 educational background?  
02 A. Okay. I went to the University of Central  
03 Florida. I first earned a liberal studies degree and  
04 then earned a forensic science bachelor's degree with  
05 minoring in molecular biology and chemistry.  
06 I worked towards a master's degree, did not earn  
07 the master's degree, but I have credits toward the  
08 master's degree in forensics and the DNA program.  
09 Q. Can you give me the dates upon which your  
10 various diplomas were received?  
11 A. These are going to be approximate. I believe  
12 '93 I earned my liberal studies degree, '96 or '97 would  
13 be the forensic science degree and then I was working  
14 towards the master's late 90's. And again, approximate,  
15 I don't have the dates in front of me.  
16 Q. Can you give me -- strike that.  
17 By whom are you currently employed?  
18 A. I'm employed by Life Technologies.  
19 Q. And what's your current title or position?  
20 A. Senior Field Application Specialist.  
21 Q. And how long have you held that title and  
22 position?  
23 A. Approximately four years. Prior to that I was  
24 just a Field Application Specialist, technically a  
25 similar role just with senior attached to it.  
00009:01 Q. And how long were you a Field Application  
02 Specialist?  
03 A. Approximately two years, so for a total of six.  
04 Q. And what position, if any, did you hold prior to

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page 1

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05 that?  
06 A. At Life Technologies, no other position.  
07 Q. Okay. Were you employed by some other company  
08 prior to your being hired by Life Technologies?  
09 A. Yes, I worked for the Florida Department of Law  
10 Enforcement. First as a technician and then as a crime  
11 lab analyst in DNA.  
12 Q. And how long did you work for the Florida  
13 Department of Law Enforcement?  
14 A. Approximately four-and-a-half years.  
15 Q. Did you have a job prior to becoming employed by  
16 the Florida Department of Law Enforcement?  
17 A. Yes. I worked for the university. I worked  
18 when I first graduated with my liberal studies degree, I  
19 worked in the field of chiropractic, so it was outside  
20 the realm of my specialty now.  
21 Q. So the first job you had with forensic or  
22 science was the job with the Florida Department of Law  
23 Enforcement?  
24 A. While I was going through school, I interned at  
25 Broward County Sheriff's Office. It was interning for  
00010:01 40 hours a week, but I was paid for 20. But it was a  
02 school requirement, so I guess I was employed by Broward  
03 County Sheriff's Office. And then while working at UCF,  
04 I worked under Dr. Ballentine, who's also -- I was  
05 working as a researcher.  
06 Q. What did you do for Dr. Ballentine?  
07 A. Well, it was when I was working towards my  
08 master's, I worked in his lab. But as far as my  
09 employment, I was really a grad teaching assistant. So I  
10 was assisting with basic chemistry classes, so it wasn't  
11 even with Dr. Ballentine, I worked for the chemistry  
12 department.  
13 Q. Did you have any interaction with Dr. Ballentine  
14 while you were a grad teaching assistant?  
15 A. Yes.  
16 Q. And what was that?  
17 A. It was when I was working on my project for my  
18 master's.  
19 Q. And what was that project?  
20 A. I was working with phenotypic traits and DNA  
21 samples.  
22 Q. And what about that caused you to have some  
23 interaction with Dr. Ballentine?  
24 A. He was my mentor.  
25 Q. Other than working on that assignment or  
00011:01 project, did you have any other contact with  
02 Dr. Ballentine?  
03 A. He was my professor for a couple of classes.  
04 Q. Anything else?  
05 A. He was in charge of the master's program, so I  
06 mean he was guidance, mentor, that was primarily.

**3. PAGE 11:25 TO 12:09 (RUNNING 00:00:27.625)**

25 Q. I show you what the Court Reporter has marked as  
00012:01 Kotkin Deposition Exhibit 1 and ask you if you have ever  
02 seen this document before?  
03 A. I've seen this org chart, yes.  
04 Q. Okay. Could you describe for me what this  
05 document is?  
06 A. It's not the most recent organizational chart,  
07 but it's an organizational chart of my group. I report  
08 to Michelle Shepherd and it just has her other reports on  
09 it.

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**4. PAGE 12:20 TO 12:24 (RUNNING 00:00:13.010)**

20 Q. You're identified as a Senior HID FAS team  
21 lead/FAS; is that correct?  
22 A. Correct.  
23 Q. And can you tell me what that means, what those  
24 initials mean?

**5. PAGE 13:01 TO 13:14 (RUNNING 00:00:44.272)**

00013:01 A. The HID stands for Human Identification, FAS  
02 stands for Field Application Specialist, team lead is my  
03 special responsibility and being a mentor to my new --  
04 not my new employees, but the new FASes to our team.  
05 Q. And this reflects your current position?  
06 A. Yes, it does.  
07 Q. And Michelle Shepherd is your current  
08 supervisor?  
09 A. That is correct.  
10 Q. You said HID means Human Identification. In the  
11 context of your job, what does that mean?  
12 A. It means primarily I support forensic science  
13 customers, so anyone who is crime lab, private lab,  
14 working with forensic type of samples.

**6. PAGE 13:15 TO 13:15 (RUNNING 00:00:01.852)**

15 MR. KARGE: Let's mark this as Exhibit 2.

**7. PAGE 13:17 TO 13:22 (RUNNING 00:00:19.059)**

17 Q. Let me show you what's been marked as Kotkin  
18 Deposition Exhibit 2 and ask you first if you have ever  
19 seen this document before?  
20 A. I don't remember it, but --  
21 Q. If you note, there are certain initials that are  
22 MDK. Are those your initials?

**8. PAGE 13:25 TO 13:25 (RUNNING 00:00:01.374)**

25 A. Those are my initials.

**9. PAGE 14:06 TO 14:10 (RUNNING 00:00:13.453)**

06 Q. Under Qualify -- I'm sorry, Quantifiler/SDS  
07 there are your initials; correct?  
08 A. Yes.  
09 Q. Do you have an understanding as to what  
10 Quantifiler/SDS means?

**10. PAGE 14:12 TO 15:05 (RUNNING 00:00:59.316)**

12 A. Yes, I do.  
13 Q. What is that?  
14 A. That's our realtime, so how we quantitate or  
15 determine how much DNA we have, it's the instrument and  
16 the chemistries that can run with that instrument.  
17 Q. And is that something that you are currently  
18 involved in?  
19 A. I'm involved with everything on this page in one  
20 way or another. I wouldn't necessarily say that is my  
21 main, you know, responsibility. I don't believe we have  
22 a recent list of, you know, contacts.  
23 Q. Okay. Down towards the middle of the page  
24 there's a line that says non-HID. Do you see that?  
25 A. Yes, I do.  
00015:01 Q. And under the FAS and FSS column are your  
02 initials again. Do you see that?  
03 A. Yes.  
04 Q. Do you have an understanding as to what non-HID

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05 is?

**11. PAGE 15:07 TO 17:10 (RUNNING 00:03:05.559)**

07 A. Yes, I do.

08 Q. What is your understanding of what that term  
09 means?

10 A. Non-HID to me is anything that is not a forensic  
11 lab. So when we work in a forensic lab, forensic labs  
12 must have validated procedures. So as a company we have  
13 validated procedures, but labs usually follow those  
14 recommendations. And if a lab chooses not to, and  
15 typically it's not a forensic lab, we categorize that as  
16 a non-HID lab.

17 So when I say they are not following our  
18 recommendations, it could be that they are running the  
19 instrument with a different capillary length or they are  
20 running -- they are analyzing the data, whether it's  
21 generated with Applied Biosystems data or Promega data,  
22 but they are analyzing it on GeneMapper 4.0 or a  
23 different version, a different software, other than the  
24 forensic software that we have. So we kind of group  
25 anything that's different from the forensic into non-HID

00016:01 category.

02 Q. And what responsibilities, if any, do you have  
03 with the non-HID customers of Life Tech?

04 A. As of today or in the past or --

05 Q. Well, start with as of today.

06 A. As of today, if a customer sends me an email or  
07 contacts the company and inquires about working with  
08 samples generated from an STR kit, again whether it's  
09 Promega or Applied Biosystems, I'll assist them.

10 I currently have the GeneMapper 4.1 software and  
11 that's not everything that my co-workers or my peers can  
12 say. So when it comes to actually looking at the data in  
13 that software, that's where I can benefit -- I can help  
14 the customer.

15 Q. When you say that not all of your co-workers  
16 have the same software, are you the person to whom they  
17 would direct non-HID questions?

18 A. If it pertained to the software in general. If  
19 it's just to analyze the data, we can usually do that in  
20 GeneMapper ID-X. But if it's something specific about  
21 GeneMapper 4.0, yes, or 4.1, whatever version, yes, my  
22 peers would send me that question to try to see if I can  
23 figure that out.

24 Q. And how long have you had those  
25 responsibilities?

00017:01 A. I believe I have been assisting with non-HID  
02 customers several years. Probably four, five years,  
03 again approximate.

04 Q. Were you assisting non-HID customers prior to  
05 the time you received the title of Senior Field  
06 Application Specialist?

07 A. Yes, I was.

08 Q. Okay. So you were doing that as a Field  
09 Application Specialist, as well?

10 A. Yes.

**12. PAGE 45:17 TO 45:19 (RUNNING 00:00:07.676)**

17 Q. Do you know if forensic clients do not work with  
18 MiniFiler?

19 A. Forensic clients do work with MiniFiler.

**13. PAGE 45:23 TO 47:07 (RUNNING 00:02:28.305)**

23 Q. And this was a series of emails, the front page

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24 of which is August 15, 2006 from you to Cynthia Waldron;  
25 correct?  
00046:01 A. Correct.  
02 Q. Would you please read the second paragraph  
03 beginning as far as my -- out loud, please.  
04 A. As far as my HID territory, I cover, and then I  
05 have the initials MA, VA, WV, NC, SC, FL, TN. However it  
06 is the goal to get me to understand GeneMapper, initialed  
07 again as GM, so that I can help all the non-HID customers  
08 using the STR kits. Also, if they are running the kits  
09 using POP7 or running it other than the way it is  
10 validated for HID. This way there is one contact person.  
11 Q. Is that a correct statement at the time of your  
12 responsibilities with respect to non-HID customers?  
13 A. Yes. So non-HID customers being non-forensic  
14 customers and then enveloping that into the role of if a  
15 customer is using an STR chemistry, regardless if it was  
16 AB or Promega, then -- but they weren't following the  
17 validated procedures, then it became a non-HID customer.  
18 Q. Okay. And if you are using the STR kits for  
19 forensics, are there requirements that you are obligated  
20 to use the validated protocol?  
21 A. Yes. As a company we have recommendations as to  
22 how these chemistries are validated and then if a  
23 forensic lab chooses to deviate from that, so be it, but  
24 forensic labs have strict rules and typically they will  
25 follow most guidelines. I'm not going to speak for all  
00047:01 forensic labs that they follow everything that we  
02 recommend.  
03 Q. And you've had contact with non-forensic  
04 customers, as well, with respect to the STR kit  
05 questions; correct?  
06 A. Correct. If a lab is not a forensic lab working  
07 with STR chemistry, yes, I'll answer those questions.

**14. PAGE 49:04 TO 49:23 (RUNNING 00:01:12.559)**

04 Q. Turning to the second page of the exhibit, the  
05 one Bates stamped 3433. The last paragraph of that makes  
06 reference to a customer at Duke and one at Philly.  
07 Do you see that?  
08 A. On the last page of 3433?  
09 Q. On the last paragraph.  
10 A. Last paragraph. Yes, I do see it now.  
11 Q. That is in the context of an email from  
12 Cynthia Waldron to you on August 14th, 2006; correct?  
13 A. August 14, 2006, yes.  
14 Q. And then the first page of Exhibit 10, then  
15 you're responding in that third paragraph where you say:  
16 As far as Duke, I actually have a webex with some  
17 customers on Friday. Did you have a webex with someone  
18 at Duke in or about the time of August 2006?  
19 A. I do not remember that.  
20 Q. When you say you don't remember, is it that you  
21 don't believe that it happened or it's possible that it  
22 happened and you presently have no recollection of the  
23 fact?

**15. PAGE 49:25 TO 50:01 (RUNNING 00:00:04.782)**

25 A. It's possible it happened. I just do not  
00050:01 remember whether or not it actually did.

**16. PAGE 69:06 TO 70:16 (RUNNING 00:02:07.032)**

06 Q. I show you what's been marked as Kotkin  
07 Exhibit 18. Please take a moment and let me know if  
08 you've seen this before.

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09 A. I do not recognize this document.  
10 Q. This purports to be an email from Ellen Bishop  
11 to you and Mark Padalino, P-A-D-A-L-I-N-O on  
12 September 28th, 2006. Subject: Non-HID customer  
13 inquiry. Do you have any reason to believe you did not  
14 receive this email in the normal course of your job  
15 duties at Life Tech?  
16 A. I have no reason to believe I did not receive  
17 this.  
18 Q. The customer being referred to is Duggan Lab, do  
19 you see that, D-U-G-G-A-N?  
20 A. I see that.  
21 Q. Do you know who Duggan Lab is?  
22 A. No, I do not.  
23 Q. Do you know where they're located?  
24 A. According to the email, Phoenix, Arizona.  
25 Q. Did you have any contact with Duggan Lab?  
00070:01 A. I do not recall.  
02 Q. Do you see right above the customer contact  
03 info, it says: Melissa, would you please contact this  
04 customer to provide technical info regarding 3730 and  
05 GM 3.5. Do you see that?  
06 A. I do.  
07 Q. Do you recall contacting anyone at Duggan Lab  
08 and providing the information requested?  
09 A. I do not recall.  
10 Q. In the normal course of your job duties, would  
11 you have done that?  
12 A. I would assume I would have.  
13 Q. The kit that is being identified that the  
14 customer wishes to buy is a Profiler Plus ID Identifier  
15 kit; correct?  
16 A. Two kits.

**17. PAGE 70:18 TO 70:24 (RUNNING 00:00:17.633)**

18 Q. Two kits. Okay. That represents two kits?  
19 A. Profiler Plus ID is one, Identifier is another  
20 kit.  
21 Q. What's the reference to 3100?  
22 A. That is a capillary electrophoresis.  
23 Q. Is D.C. 1.1 an additional designation of that  
24 type of instrument?

**18. PAGE 71:01 TO 71:11 (RUNNING 00:00:35.392)**

00071:01 A. That was the data collection software version.  
02 Q. The question goes on to say they want  
03 information about using the Profiler Plus ID and  
04 Identifier on a 3730 with GM 3.5. Do you see that?  
05 A. Yes, I do.  
06 Q. That represents -- 3730 is another instrument;  
07 correct?  
08 A. Correct.  
09 Q. And the GM 3.5 is GeneMapper version 3.5?  
10 A. Correct.  
11 Q. Is that also a non-HID protocol?

**19. PAGE 71:11 TO 71:11 (RUNNING 00:00:00.908)**

11 Q. Is that also a non-HID protocol?

**20. PAGE 71:13 TO 71:14 (RUNNING 00:00:05.605)**

13 A. Yes, GeneMapper 3.5 would automatically make it  
14 a non-HID.

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**21. PAGE 80:20 TO 81:22 (RUNNING 00:01:29.484)**

20 Q. I show you what's been marked as Kotkin  
21 Deposition Exhibit 22 and ask you to look at it and tell  
22 me if you recall seeing this document before.  
23 A. I do not remember the document.  
24 Q. It purports to be an email from Michelle  
25 Shepherd to you dated 11/29/06. Subject: Chimerism  
00081:01 customer needs GM 4.0 assistance - Mass General Hospital.  
02 Do you see that?  
03 A. I do see that.  
04 Q. Do you have any reason to believe you did not  
05 receive this email in the normal course of your job  
06 responsibilities on or about 11/29/06?  
07 A. No.  
08 Q. Do you have an understanding of what the word  
09 Chimerism means?  
10 A. I recognize the word, but to give a definition,  
11 no, I would be unable to do so.  
12 Q. How do you recognize the word?  
13 A. I know I saw it back in my studies.  
14 Q. You indicated earlier that anyone using  
15 GeneMapper 4.0 would be a non-HID customer; right?  
16 A. Correct.  
17 Q. And that's what this email said, this particular  
18 customer at Mass General Hospital was using?  
19 A. Yes, in the subject line it says GeneMapper 4.0  
20 assistance.  
21 Q. And they were using Profiler Plus as the STR  
22 product?

**22. PAGE 81:24 TO 81:25 (RUNNING 00:00:03.845)**

24 A. According to this email, it references Profiler  
25 Plus panels and bins.

**23. PAGE 113:18 TO 115:06 (RUNNING 00:02:21.495)**

18 Q. I show you what's been marked as Kotkin  
19 Deposition Exhibit 38. Would you take a look at that and  
20 let me know if you have seen this document before?  
21 A. No, I do not remember it offhand.  
22 Q. This is an email string from April Orbison at  
23 the top to you dated 12/20/07. Do you see that?  
24 A. Yes, I do.  
25 Q. Do you have any reason to believe you didn't  
00114:01 receive this email string in the normal course of your  
02 job responsibilities?  
03 A. No.  
04 Q. Who's April Orbison?  
05 A. She is also a field application specialist.  
06 Q. Did you know her or do you know her?  
07 A. I do know her.  
08 Q. And in her email to you, she's asking you to  
09 look at the email that's attached and letting her know  
10 what you think. Do you see that?  
11 A. Yes.  
12 Q. Do you recall doing that?  
13 A. I don't remember.  
14 Q. Would you have done that in writing or would you  
15 have done that verbally?  
16 A. I don't know in particular. In general emails  
17 were easier for me due to my travel schedule. Again,  
18 with business hours, emails are typically easier, but in  
19 this actual case, I'm sorry to say I don't remember.  
20 Going back to 2007 with many of these unfortunately it's  
21 difficult for me to remember exactly what I did and  
22 didn't do.

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23 Q. Would you turn to the second page of the  
24 exhibit, please. And this is the email that they are  
25 asking you to look at. The second paragraph says: I  
00115:01 have a customer who is considering POP7 on the 3130 with  
02 Identifiler for bone marrow engraftment.  
03 Do you see that?  
04 A. Yes, I do.  
05 Q. Bone marrow engraftment is not a forensic  
06 application; is it?

**24. PAGE 115:08 TO 115:16 (RUNNING 00:00:32.951)**

08 A. No.  
09 Q. And in the third paragraph it says originally  
10 this site was planning to use Promega kits for bone  
11 marrow engraftment, but I think they will consider  
12 AmpFLSTR kits. Do you see that?  
13 A. I do.  
14 Q. Did you get involved in situations where sales  
15 force for Applied Biosystems was trying to sell Applied  
16 Biosystems kits instead of Promega kits to customers?

**25. PAGE 115:18 TO 115:23 (RUNNING 00:00:12.136)**

18 A. I normally did not get involved with the sales.  
19 Typically my role would come in afterwards or supporting  
20 any questions that the customer may have.  
21 Q. Okay.  
22 A. Regardless of the application in which they're  
23 using it.

**26. PAGE 116:03 TO 116:09 (RUNNING 00:00:15.684)**

03 Q. You indicated that you normally weren't involved  
04 in sales, but would answer technical questions or support  
05 if requested?  
06 A. Uh-huh.  
07 Q. My question is: The email, which is the first  
08 page of this exhibit, is such an example of that; is it  
09 not?

**27. PAGE 116:11 TO 116:17 (RUNNING 00:00:23.769)**

11 A. Yes, she's asking my opinion.  
12 Q. And you don't recall whether you provided an  
13 opinion or not?  
14 A. No, I do not.  
15 Q. At the time of December '07, were you aware of  
16 any customers using Applied Biosystem products for bone  
17 marrow engraftment?

**28. PAGE 116:19 TO 116:23 (RUNNING 00:00:13.909)**

19 A. I would not know what application they were  
20 using it in. They may be using our kits, but I wouldn't  
21 necessarily know for what purpose.  
22 Q. Well, you might not necessarily know, but here  
23 you are being told; right?

**29. PAGE 116:25 TO 116:25 (RUNNING 00:00:00.901)**

25 A. Yes.

**30. PAGE 119:25 TO 121:23 (RUNNING 00:03:04.465)**

25 Q. I show you what's been marked as Kotkin  
00120:01 Deposition Exhibit 40. Take a minute to look at it and  
02 let me know if you've seen this before.  
03 A. I recognize it to be minutes from a conference  
04 call. As to the exact document, I don't remember it. I

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05 don't remember the phone call.  
 06 Q. It's minutes for -- described as the All HID  
 07 Sales/Service/Support/Product Group; correct?  
 08 A. Correct.  
 09 Q. And the date was Monday, March 17th, 2008;  
 10 right?  
 11 A. Correct.  
 12 Q. And it shows that you attended the call; right?  
 13 A. Correct.  
 14 Q. And the third item from the bottom of the first  
 15 page has the name Melissa. Do you see that?  
 16 A. I do.  
 17 Q. Is that you?  
 18 A. That is.  
 19 Q. And it says: Scheduled to GM ID webexes for  
 20 non-HID HID customers initial exposure to S/W.  
 21 Do you see that?  
 22 A. I do.  
 23 Q. Does the S/W refer to software?  
 24 A. It does.  
 25 Q. And did you schedule two -- strike that.  
 00121:01 What does GM ID mean?  
 02 A. GeneMapper ID is our specific analysis software.  
 03 So the similar program of GeneMapper, GeneMapper ID is  
 04 specific for forensic customers working in crime labs and  
 05 databasing labs.  
 06 Q. So what -- for whom were you scheduling webexes?  
 07 A. I don't know. I don't know if there's supposed  
 08 to be a comma in there so it's a non-HID HID customer.  
 09 From looking at this, it looks like I was showing a  
 10 customer GeneMapper ID software, so I don't know what  
 11 application, what STRs we went over. I was just showing  
 12 them the software.  
 13 Q. So you don't know what non-HID HID customers  
 14 refers to?  
 15 A. No, I do not. I do not remember.  
 16 Q. Did you do these two webexes around the time  
 17 that these minutes were taken in March of 2008?  
 18 A. I don't remember personally doing them, but if  
 19 it's in the document, then most likely I did. But I  
 20 can't say when or whom -- with whom I did it with.  
 21 Q. So you don't remember the names of the customers  
 22 that you showed the software to?  
 23 A. No, I do not.

## 31. PAGE 156:22 TO 157:15 (RUNNING 00:01:24.241)

22 Q. Let me show you what the Court Reporter has  
 23 marked as Kotkin Exhibit 52. Please take a moment to  
 24 look at it and let me know if you recall seeing this  
 25 document before.  
 00157:01 A. I vaguely remember this document. I remember  
 02 Lisa running studies.  
 03 Q. Okay. And this is an email from Lisa Calandro  
 04 -- I'm sorry, from Lisa Ortuno to you and the others  
 05 listed here dated April 21, 2010; correct?  
 06 A. Correct.  
 07 Q. And the subject of the email is 3500 research  
 08 instrument data and then it lists 50 CM POP7 for ID, ID  
 09 Plus 28 and 29, MiniFiler and Yfiler and AL for NGM.  
 10 Do you see that?  
 11 A. I do.  
 12 Q. Just so it's clear what all this means, could  
 13 you tell me what each of those -- what your understanding  
 14 of what each of those references mean starting with 50cm  
 15 POP7 for ID.

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## 32. PAGE 157:17 TO 158:07 (RUNNING 00:00:51.091)

17 A. My understanding of reading that subject line is  
 18 that with the 3500 instrument, which is another capillary  
 19 electrophoresis instrument, that she looked at a  
 20 50-centimeter array using POP7 for Identifiler,  
 21 Identifiler Plus at 28 cycles and also 29 cycles,  
 22 MiniFiler and Yfiler. I do not know exactly what she  
 23 means in the parentheses.  
 24 Q. NGM is another STR kit; correct?  
 25 A. Correct. But I'm unsure what she means by the  
 00158:01 AL for NGM. I could guess, but I'm not exactly sure what  
 02 she meant by that.  
 03 Q. Okay. You said you were aware of Lisa Ortuno  
 04 running studies; correct?  
 05 A. Yes, correct.  
 06 Q. And you meant at this time period; right?  
 07 A. I would assume so, yes.

## 33. PAGE 158:03 TO 159:01 (RUNNING 00:01:25.188)

03 Q. Okay. You said you were aware of Lisa Ortuno  
 04 running studies; correct?  
 05 A. Yes, correct.  
 06 Q. And you meant at this time period; right?  
 07 A. I would assume so, yes.  
 08 Q. Okay. In April of 2010, did you have an  
 09 understanding as to what the purpose of those research  
 10 studies were?  
 11 A. My understanding was so that we could better  
 12 support any customers working with different  
 13 configurations.  
 14 Q. All of these configurations are using a POP7;  
 15 correct?  
 16 A. If I'm understanding the subject line correctly,  
 17 yes.  
 18 Q. Okay. Look at the first sentence of the email.  
 19 Where it references I ran an STR kits (positive controls  
 20 and allelic ladders) on the 3500 research box it he 600  
 21 building using a 50cm POP7 configuration.  
 22 And I believe there's a typo. It should read on  
 23 the 3500 research box in the 600 building. But I read it  
 24 the way it was written.  
 25 Does that refresh your recollection that all of  
 00159:01 the STR kits were run on a POP7 configuration?

## 34. PAGE 159:04 TO 159:17 (RUNNING 00:00:42.936)

04 A. According to what Lisa typed, yes, that's what  
 05 she's telling me.  
 06 Q. And if it was a POP7, again those are non-HID;  
 07 correct?  
 08 A. Correct, on the 3500 that is a correct  
 09 statement.  
 10 Q. The second to the last sentence of that  
 11 paragraph says: This is to get a better feel for what  
 12 the data looked like for our non-HID customers who want  
 13 to try this. Do you see that?  
 14 A. I do.  
 15 Q. Were you aware at the time of non-HID customers  
 16 who were interested in trying any of those  
 17 configurations?

## 35. PAGE 159:19 TO 159:24 (RUNNING 00:00:22.224)

19 A. Not specifically, but it was only a matter of  
 20 time for customers to start taking their STRs and running  
 21 them on the 3500. The 3130s are within five years will

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22 be discontinued.  
23 Q. Okay. So was the research that Lisa Ortuno was  
24 doing relating to a newer version of the instrument?

**36. PAGE 160:01 TO 160:02 (RUNNING 00:00:06.563)**

00160:01 A. Yes, a 3500 is a newer version of a capillary  
02 electrophoresis instrument.

**37. PAGE 178:03 TO 178:14 (RUNNING 00:00:38.246)**

03 A. I recall this document and it was to several  
04 people.  
05 Q. From Lisa Ortuno; correct?  
06 A. Correct.  
07 Q. And it was her research on the 3500 using  
08 several of the STR kits and a POP7; correct?  
09 A. And a 50 centimeter array.  
10 Q. Yes. And in the second line of the email,  
11 there's reference to Building 600, do you see that?  
12 A. I do.  
13 Q. Did you know if that is a Life Technologies or  
14 Applied Biosystems facility that she's referring to?

**38. PAGE 178:17 TO 178:22 (RUNNING 00:00:16.283)**

17 A. It was an Applied Biosystems building and now is  
18 a Life Technologies building.  
19 Q. Okay. And where is that located?  
20 A. That is Foster City.  
21 Q. And Building 600, is that the laboratory  
22 building?

**39. PAGE 178:24 TO 179:03 (RUNNING 00:00:16.434)**

24 A. Building 600, if I have my numbers correct, is  
25 our training facility in which we have instruments to our  
00179:01 disposal.  
02 Q. So it's the building in which this research was  
03 performed; correct?

**40. PAGE 179:05 TO 179:05 (RUNNING 00:00:03.000)**

05 A. According to Lisa, that's what she's stating.

**41. PAGE 211:06 TO 212:09 (RUNNING 00:01:38.501)**

06 Q. You have stated several times today that what  
07 you've referred to as validated protocols. What do you  
08 mean by validated protocols?  
09 A. For the forensic community, we run our samples  
10 under a certain criteria or chemistry so that this way  
11 when we show them to the customers, the forensic  
12 community, they know that we have run a set of samples  
13 with the chemistry, the instrument and the software and  
14 gotten accurate results, okay? So that's -- by doing all  
15 that, that's a validated procedure.  
16 Q. Okay. Are you aware of any forensic customer of  
17 Applied Biosystems that does not use validated protocols  
18 for its forensic lab work?  
19 A. Yes, I am.  
20 Q. Which ones?  
21 A. I can tell you what I know that they change. I  
22 don't know exactly which labs do what. I wouldn't trust  
23 my memory on that.  
24 Q. Okay. What do you know about what they changed?  
25 A. Some labs will reduce reactions, the volume of  
00212:01 the amplification reaction, they will reduce that. So  
02 let's say for Profiler Plus the reaction volume is  
03 50 microliters, they will reduce it to 25.

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04           So what happens when this lab wants support,  
05 they're troubleshooting their data. One of the first  
06 things we are going to ask them to do is run it under the  
07 full reaction, remove the variable and then we'll  
08 troubleshoot from there because we have no data to  
09 support that 25 microliter reaction.

42. PAGE 213:03 TO 213:16 (RUNNING 00:00:49.525)


03           Q. Are you aware of any other modification or  
04 variance from the validated protocols used by the  
05 forensic customers of Applied Biosystems?  
06           A. Some labs may change how long they inject a  
07 sample for versus the default times we have on our  
08 instruments. Some labs do that due to the overall  
09 sensitivity of the instrument. And then some labs do it  
10 sample specific.  
11           When it's sample specific, the issue isn't  
12 really the sensitivity of the instrument, it's the  
13 amplification of the sample to begin with, so  
14 scientifically they should go back and re-amp. So that  
15 would be a modification that we don't necessarily  
16 support.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:35:51.080)

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 Kurutz, Keith (Vol. 01) - 11/16/2011

1 CLIP (RUNNING 00:28:53.184)

 QC020412

KURUDES

49 SEGMENTS (RUNNING 00:28:53.184)



1. PAGE 4:03 TO 5:13 (RUNNING 00:01:17.619)

03 THE VIDEOGRAPHER: We are on the record  
04 at 9:04 a.m. Today's date is November 16th, 2011.  
05 This is disk No. 1 of the deposition of Peter  
06 Kurutz. This deposition is being taken in the  
07 matter of Promega Corporation vs. Life Technologies  
08 Corporation, et al. This matter is pending in the  
09 United States District Court for the Western  
10 District of Wisconsin, Case No. 10-CV-281.  
11 This deposition is taking place at the  
12 offices of Brown & Jones Reporting located at  
13 735 North Water Street, Milwaukee, Wisconsin.  
14 My name is John Spohnholtz, Videographer  
15 for Brown & Jones Reporting, and the Court Reporter  
16 is Peggy Mitchell.  
17 Will counsel please state their  
18 appearances, and whom they represent, beginning with  
19 Plaintiff's counsel, and then the Reporter will  
20 swear in the witness.  
21 MR. CARROLL: Pete Carroll representing  
22 Promega.  
23 MR. MCCARTHY: Michael McCarthy  
24 representing Defendant Life Technologies and the  
25 witness, Keith Kurutz.  
00005:01 KEITH KURUTZ, called as a witness herein,  
02 having been first duly sworn on oath, was examined  
03 and testified as follows:  
04 EXAMINATION  
05 BY MR. CARROLL:  
06 Q Good morning, Mr. Kurutz.  
07 A Good morning.  
08 Q Are you currently employed?  
09 A Yes, I am.  
10 Q And where is that?  
11 A Life Technologies.  
12 Q Okay. And where do you currently live?  
13 A Brookfield, Wisconsin.

2. PAGE 6:06 TO 7:01 (RUNNING 00:00:50.601)

06 Q All right. Why don't we just go over your  
07 background a little bit.  
08 Where did you do your undergrad?  
09 A University of Wisconsin-Madison.  
10 Q Okay. And what did you do it in?  
11 A Degree in biology with an emphasis on molecular  
12 biology.  
13 Q And did you do any lab work in the course of that  
14 undergrad experience?  
15 A Yes.  
16 Q Okay. Did that lab work involve biology?  
17 A Yes.  
18 Q Any PCR?  
19 A No.  
20 Q Okay. And what were the years of your undergrad  
21 period?

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page 1

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**Promega Corporation v. Life Technologies Corporation**

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22 A 2003 to 2007.  
23 Q And then, when you finished your undergrad at  
24 UW-Madison, where'd you go?  
25 A I worked for a -- a company called Menards for a few  
00007:01 months until I was employed with Life Technologies.

**3. PAGE 7:18 TO 7:21 (RUNNING 00:00:08.298)**

18 Okay. So we're up to the point where  
19 you've joined Life Technologies. What was your  
20 position at that time?  
21 A Quality control analyst.

**4. PAGE 7:22 TO 8:07 (RUNNING 00:00:28.850)**

22 Q And what year was this now?  
23 A 2008.  
24 Q So it was in that 2007/2008 period that you worked  
25 at that other company?  
00008:01 A Correct.  
02 Q Okay. Now, quality control, what did the quality  
03 control position entail?  
04 A All of the various HLA product lines that our  
05 business produced. I was responsible for testing  
06 all those product lines to make sure they met  
07 certain release criteria.

**5. PAGE 17:20 TO 18:07 (RUNNING 00:01:18.493)**

20 Q Okay. Let me mark as Exhibit 1 something I found on  
21 the website.  
22 (Exhibit No. 1 was marked)  
23 BY MR. CARROLL:  
24 Q Okay. Let me show you what's been marked Exhibit 1,  
25 Mr. Kurutz. At the bottom of this single page it's  
00018:01 Bates stamped PRO072696. And if you can just take a  
02 look at it. My first question will be have you seen  
03 this before.  
04 A Yes.  
05 Q Okay. And when have you seen this?  
06 A It's from our website, as you state. And I've been  
07 to our website before on various occasions.

**6. PAGE 20:16 TO 21:07 (RUNNING 00:00:46.754)**

16 Q And in the context of transplants then, these kits  
17 that are being sold, they're for real life cases  
18 where patients are getting transplants?  
19 A Which kits in particular?  
20 Q Well, you mentioned that one, for example, the renal  
21 biomarker. That's for real life cases?  
22 A It can be used for both clinical applications and  
23 research applications.  
24 Q Okay. What about the SeCore?  
25 A Same thing. Clinical and research.  
00021:01 Q Okay. And in the case where it's used for clinical,  
02 that could be a transplant lab that's actually doing  
03 transplants?  
04 A Correct.  
05 Q Okay. And would SeCore be used only before  
06 transplant?  
07 A Yes.

**7. PAGE 23:23 TO 24:20 (RUNNING 00:01:02.238)**

23 Q Okay. Now, did there come a time when you left this  
24 QC position and moved on to another position at Life  
25 Tech?  
00024:01 A Yes.

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02 Q And when was that?  
 03 A Spring, summer time frame of 2009.  
 04 Q And how did that happen?  
 05 A There was a position, a field applications  
 06 specialist position open, and I applied for it.  
 07 Q And what's a field application specialist?  
 08 A We are tasked with assisting customers,  
 09 troubleshooting, product demonstrations, product  
 10 trainings, et cetera.  
 11 Q Okay. And would these field application specialists  
 12 do tech support?  
 13 A At the time of hire, yes.  
 14 Q That's changed?  
 15 A Correct.  
 16 Q And when did that change?  
 17 A Beginning of this year.  
 18 Q Okay. And why did that change?  
 19 A To align ourselves more with the rest of the field  
 20 application specialists within Life Technologies.

## 8. PAGE 25:19 TO 26:17 (RUNNING 00:00:44.945)

19 Q Okay. Now, I take it you got this position, the  
 20 field application specialist position?  
 21 A Yes.  
 22 Q And in that role did you have occasion to visit  
 23 labs?  
 24 A Yes.  
 25 Q Okay. And did you have occasions to visit  
 00026:01 transplant labs?  
 02 A Yes.  
 03 Q And did these transplant labs purchase the HLA kits  
 04 we've been talking about this morning?  
 05 A Yes.  
 06 Q Okay. And did you learn that these transplant labs  
 07 were using these kits in real life situations?  
 08 A Yes.  
 09 Q And these were in the context of testing donors and  
 10 recipients for transplants?  
 11 A Yes.  
 12 Q Bone marrow transplants?  
 13 A Yes.  
 14 Q Kidney transplants?  
 15 A Yes.  
 16 Q Any other transplants?  
 17 A Liver, heart, lung.

## 9. PAGE 35:18 TO 36:08 (RUNNING 00:00:28.762)

18 Q Okay. Lisa Ortuno. Do you see that name?  
 19 A Yes.  
 20 Q Have you interacted with her?  
 21 A Yes.  
 22 Q In the past?  
 23 A Yes.  
 24 Q And in what context?  
 25 A Same as Ellen. Various, you know, face-to-face  
 00036:01 company meetings. Spoken to her on the phone also.  
 02 Q Okay.  
 03 A E-mail communication.  
 04 Q Any communications of a technical nature involving  
 05 products?  
 06 A Lisa, yes.  
 07 Q And what were those products?  
 08 A In particular human identification STR kits.

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**10. PAGE 36:09 TO 36:10 (RUNNING 00:00:05.242)**

09 Q And how did that come about? How did you happen to  
10 be speaking with Lisa about STR kits?

**11. PAGE 36:12 TO 37:18 (RUNNING 00:01:31.023)**

12 THE WITNESS: Our HLA customers and  
13 Lisa's HID customers have a common interest with the  
14 type of tests that they carry out, in particular the  
15 instrument that it's run on, the CE instrumentation.  
16 Our HLA customers, when we go to  
17 demonstrate our SeCore product line in particular,  
18 like to know whether or not the STR products will  
19 also run with minimal configuration on the same  
20 piece of instrumentation.  
21 BY MR. CARROLL:  
22 Q And why is that?  
23 A It -- most -- most labs, HLA labs in particular,  
24 don't have the money to purchase multiple pieces of  
25 instrumentation. So they want to be able to run  
00037:01 both assays on the same instrument with as little  
02 work as necessary.  
03 Q Okay. So it's a convenience and financial issue?  
04 A Yes.  
05 Q Okay. And, in fact, for the SeCore product that  
06 we've talked about this morning, are there  
07 instruments that you can run that SeCore HLA test on  
08 that you can also run STR kits on?  
09 A Yes.  
10 Q And what instrument is that?  
11 A The 3500 series.  
12 Q Okay.  
13 A 3130 series. 3100 series. 3730 series. CE  
14 instrumentation.  
15 Q What about the 310?  
16 A Yes. It's very rarely used, though.  
17 Q Kind of an old machine?  
18 A Yes.

**12. PAGE 37:19 TO 38:07 (RUNNING 00:00:44.939)**

19 Q Okay. Now, you mentioned there's a -- these  
20 customers, these clinical customers, have this  
21 common interest between HLA testing and STR testing.  
22 Why is that?  
23 A HLA customers use STR products for a particular type  
24 of test that they carry out in their HLA labs.  
25 Q And what's that?  
00038:01 A Chimerism testing.  
02 Q And how did you learn about that?  
03 A Various discussions with labs that I visited.  
04 Q So is it fair to say you would go into a lab as an  
05 HLA FAS guy, and be talking about the HLA kits, and  
06 you would also learn about what the clinical lab  
07 would be doing with STR kits?

**13. PAGE 38:09 TO 38:09 (RUNNING 00:00:00.787)**

09 THE WITNESS: Sure.

**14. PAGE 38:11 TO 39:06 (RUNNING 00:00:58.580)**

11 Q And how would you learn that?  
12 A Through what I just mentioned. So a demonstration  
13 of, you know, our SeCore kit in particular might  
14 lead to a discussion or a question from the customer  
15 simply asking, you know, will this instrument also  
16 be able to run STR chemistry as well, with minimal

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17 changes to configuration, et cetera.  
18 Q Okay. So let's do some examples. While you've been  
19 working for Life Tech, have you gone to a lab where  
20 they already have a machine that they're doing STR  
21 work on?  
22 A Yes.  
23 Q Okay. And would this be a clinical lab?  
24 A Yes.  
25 Q And this would be for transplantation?  
00039:01 A Yes.  
02 Q And you would come in and demo the HLA kits?  
03 A Yes.  
04 Q Okay. And they would say great, but can we run that  
05 HLA kit you've demoed on this same machine we're  
06 doing the STR kits on?

**15. PAGE 39:08 TO 39:08 (RUNNING 00:00:00.873)**

08 THE WITNESS: Correct.

**16. PAGE 56:07 TO 57:02 (RUNNING 00:01:00.636)**

07 Q Okay. Can you name any other labs, other than  
08 Sharon Adams' lab, where you did a demonstration of  
09 the SeCore kit where the lab was a clinical  
10 transplant lab?  
11 A DCI Laboratories.  
12 Q Let's stop there. What's DCI Laboratories?  
13 A Dialysis Clinic, Inc.  
14 Q Okay. Where are they located?  
15 A Nashville, Tennessee.  
16 Q And you did a demo there for SeCore?  
17 A Correct.  
18 Q And they're a transplant lab?  
19 A Correct.  
20 Q And do they do real life donors and recipients?  
21 A Yes.  
22 Q And what kind of transplants?  
23 A I'm not a hundred percent sure.  
24 Q Okay. Kidney?  
25 A I don't know.  
00057:01 Q Okay. And so you demoed the kit. Did they have an  
02 ABI instrument already?

**17. PAGE 57:04 TO 57:11 (RUNNING 00:00:14.245)**

04 THE WITNESS: Yes.  
05 BY MR. CARROLL:  
06 Q And what were they using that instrument for?  
07 A They were using it for HLA sequencing using our  
08 competitor's product. They also use it for  
09 chimerism studies.  
10 Q Using STR kits?  
11 A Yes.

**18. PAGE 57:12 TO 57:17 (RUNNING 00:00:14.737)**

12 Q And were they ABI STR kits?  
13 A I don't know.  
14 Q And was this one of the customers that asked you,  
15 when you demoed, will your SeCore kit work on our  
16 ABI instrument?  
17 A I don't recall.

**19. PAGE 58:17 TO 59:13 (RUNNING 00:00:51.283)**

17 Q Okay. I interrupted you after DCI. Go ahead. Is  
18 there any other lab that you can recall?  
19 A Georgetown University.

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20 Q Okay. And is that in Washington?  
21 A Yes.  
22 Q And what kind of lab did you demo there?  
23 A It's an HLA lab.  
24 Q Okay. Transplant?  
25 A Yes.  
00059:01 Q Do you know the kind of transplants?  
02 A No, I don't.  
03 Q And were they using a competitor product?  
04 A No.  
05 Q How did you have occasion to do the demo there?  
06 A This particular lab wanted to get into HLA  
07 sequencing, so they were new to HLA sequencing.  
08 Q Did they have an ABI instrument?  
09 A They purchased one from us.  
10 Q Oh. After your demo?  
11 A Prior to.  
12 Q Okay. And why did they purchase it prior to?  
13 A For the --

**20. PAGE 59:16 TO 59:21 (RUNNING 00:00:08.894)**

16 THE WITNESS: With the intent of bringing  
17 on an HLA sequencing assay.  
18 BY MR. CARROLL:  
19 Q Okay. Any other assays?  
20 A They intend to bring on chimerism studies in the  
21 future.

**21. PAGE 76:17 TO 76:22 (RUNNING 00:00:21.641)**

17 Q Okay. Now, of the four we've talked about, DCI,  
18 Georgetown, Miami, University of North Carolina, did  
19 any of those individuals ask you, during either the  
20 demo or the training, about the ability of the  
21 SeCore kit to work on the same machine because they  
22 were doing STRs on it?

**22. PAGE 76:24 TO 77:11 (RUNNING 00:00:28.615)**

24 THE WITNESS: Yes.  
25  
00077:01 BY MR. CARROLL:  
02 Q And which one was that?  
03 A Georgetown.  
04 Q Okay. And what did you say?  
05 A First off, Georgetown, again, was a new customer,  
06 new to sequencing. They purchased the instrument  
07 for the purpose of sequencing, and they had an  
08 interest in bringing on chimerism studies in the  
09 future. So their question was as simple as will  
10 this instrument work for both applications. To  
11 which I responded yes.

**23. PAGE 79:06 TO 80:09 (RUNNING 00:01:01.118)**

06 Q So we've done DCI, Georgetown, Miami, North Carolina  
07 and Temple. Any others?  
08 A Stony Brook University.  
09 Q Okay. That's on Long Island?  
10 A Yes.  
11 Q And is that a clinical transplant lab?  
12 A Yes.  
13 Q Is that Larry Usher?  
14 A Correct.  
15 Q And you went on-site?  
16 A Yes, I did.  
17 Q To do a demo?  
18 A Demo, correct.

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19 Q Demo. And when was that, approximately?  
 20 A I believe it was this year.  
 21 Q Okay.  
 22 A That's as best as I can remember.  
 23 Q And you went into the lab to do the demo of the  
 24 SeCore HLA kit?  
 25 A Yes.  
 00080:01 Q And was Larry there?  
 02 A Yes, he was.  
 03 Q And did he attend the demo?  
 04 A Yes.  
 05 Q Were there others who attended the demo?  
 06 A Yes.  
 07 Q And who were they?  
 08 A Serafin. And then also their director was in and  
 09 out.

## 24. PAGE 80:13 TO 81:06 (RUNNING 00:00:42.948)

13 And you said this was a demo.  
 14 A Yes.  
 15 Q And this was the SeCore HLA kit?  
 16 A Correct.  
 17 Q Okay. And they already had a machine?  
 18 A Yes.  
 19 Q And what machine did they have?  
 20 A 3500.  
 21 Q Okay. Any initials after the 3500?  
 22 A Xl.  
 23 Q Xl. Okay. And what were they using the 3500 for?  
 24 A Chimerism at the time.  
 25 Q And was this with ABI STR kits?  
 00081:01 A At the time of the demo, yes.  
 02 Q Okay. And did they ask you whether the HLA SeCore  
 03 kit could run on the 3500?  
 04 A Yes.  
 05 Q And what did you say?  
 06 A That's why I was there for the demo.

## 25. PAGE 81:07 TO 82:02 (RUNNING 00:01:13.657)

07 Q Did they end up purchasing -- putting a purchase  
 08 order in for the SeCore HLA kit?  
 09 A It's to be determined still.  
 10 Q Okay. Is that recent?  
 11 A It's -- it's been ongoing.  
 12 Q Okay. Now, how do you kind of function in that time  
 13 period where you've done the demo and they haven't  
 14 made a decision? Do you have any more to do in the  
 15 lab? Do you pass the baton to somebody else, a  
 16 sales rep or something? How -- or do you just leave  
 17 the customer alone?  
 18 A I leave the customer alone outside of any questions  
 19 they might have for whatever reason.  
 20 Q Okay. Now we've done Stony Brook. Any further ones  
 21 that you've demoed the kit, the SeCore HLA kit?  
 22 A Not that I -- none that are coming to mind right  
 23 now, no.  
 24 Q Okay. Let me just run a couple by you. Have you  
 25 ever demoed the HLA SeCore kit at Marshall  
 00082:01 University?  
 02 A No.

## 26. PAGE 87:15 TO 88:07 (RUNNING 00:00:31.536)

15 Q Labs, Inc.?  
 16 A Which state?  
 17 Q I think Colorado.

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18 A Okay.  
19 Q Do you know them?  
20 A Yes.  
21 Q Okay. How do you know them?  
22 A I carried out a SeCore demo there.  
23 Q And when was that?  
24 A This year.  
25 Q Recently?  
00088:01 A I believe it was earlier in the year.  
02 Q Okay. Did they have an ABI machine?  
03 A Yes.  
04 Q And were they using it for STRs?  
05 A Yes.  
06 Q And you learned that when you did the demo?  
07 A Correct.

**27. PAGE 88:08 TO 88:10 (RUNNING 00:00:09.981)**

08 Q And did they ask you whether the HLA SeCore kit  
09 could be used on that machine?  
10 A I don't recall.

**28. PAGE 107:21 TO 108:09 (RUNNING 00:00:26.145)**

21 Q Sure.  
22 A I just want to provide further clarification on  
23 something we were talking about before.  
24 So when we were talking about Stony Brook  
25 University?  
00108:01 Q Mm-mm.  
02 A You had asked whether at the time of the demo they  
03 were using STR kits, AB STR kits.  
04 Q Mm-mm.  
05 A I said yes. To just provide further clarification,  
06 the lab has since transitioned and are currently  
07 using Promega's STR kits for their chimerism  
08 studies.  
09 Q Okay. Thank you.

**29. PAGE 112:14 TO 112:18 (RUNNING 00:00:12.410)**

14 Q Okay. So when you would do a demo, you wouldn't  
15 also do, like, a PowerPoint or video presentation?  
16 A We do PowerPoints, yes.  
17 Q That would be part of the demo?  
18 A It can be, yes.

**30. PAGE 113:11 TO 113:16 (RUNNING 00:00:17.027)**

11 Q Okay. In that PowerPoint, is the feature that the  
12 HLA SeCore kit can be run on the same ABI instrument  
13 as that for STRs pointed out?  
14 A There is no such statement.  
15 Q No such statement?  
16 A No.

**31. PAGE 113:17 TO 114:14 (RUNNING 00:00:50.603)**

17 Q Why is that?  
18 A I deal specifically with HLA products. I have  
19 nothing to do with HID STR chemistry whatsoever. So  
20 I have no right to speak to such a product.  
21 Q Right. But the customer wants to know. You said  
22 earlier this morning the customer wants to know  
23 whether they have to buy a new machine or whether  
24 they can still use this HLA SeCore on the same  
25 machine they're STR testing on.  
00114:01 A Mm-mm.  
02 Q Right?

# Promega Corporation v. Life Technologies Corporation

03 A Mm-mm.  
04 Q It'll help if you say yes just because she doesn't  
05 do very well with a mm-mm.  
06 A Okay.  
07 Q So that was your earlier testimony, right?  
08 A Yes.  
09 Q So if that's going to be a question, why wouldn't  
10 they put that on the PowerPoint as one of the  
11 features?  
12 A The STR -- again, the HID STR products are not one  
13 of our HLA products.  
14 Q Right.

## 32. PAGE 114:09 TO 114:14 (RUNNING 00:00:14.133)

09 Q So if that's going to be a question, why wouldn't  
10 they put that on the PowerPoint as one of the  
11 features?  
12 A The STR -- again, the HID STR products are not one  
13 of our HLA products.  
14 Q Right.

## 33. PAGE 114:15 TO 115:03 (RUNNING 00:00:50.196)

15 A Sure, it is an interest of our customers, the HID  
16 STR products. But, you know, it's up to the  
17 customer in the end as to how to make that HID STR  
18 product work on the CE instrument that is also  
19 running our SeCore product. All we train the  
20 customer to is how to use that SeCore product on  
21 that CE instrument.  
22 Q Right. But if -- if the customer doesn't want to  
23 buy a new machine, and they're using a competitor  
24 product that does work on the machine they're doing  
25 STRs, the natural question's going to be does your  
00115:01 SeCore product also work on the instrument that  
02 we're doing the STRs, right?  
03 A It can come up, yes.

## 34. PAGE 115:04 TO 115:05 (RUNNING 00:00:02.989)

04 Q Okay. But you don't have that in the PowerPoint?  
05 A No.

## 35. PAGE 116:23 TO 117:04 (RUNNING 00:00:28.262)

23 Q How then did you learn about chimerism?  
24 A Through various discussions with our HLA customers.  
25 So, you know, again, our HLA customers use our HLA  
00117:01 specific products and then they also use HID's STR  
02 chemistry as well. So we hear about it from our  
03 customers. The fact that they use it.  
04 Q Okay.

## 36. PAGE 128:09 TO 128:19 (RUNNING 00:00:22.387)

09 Q Mr. Kurutz, the Court Reporter has marked as  
10 Exhibit 8 a single page document Bates stamped at  
11 the bottom right corner Life-0124421. Do you see  
12 that?  
13 A Yes.  
14 Q And this appears to be an e-mail you authored?  
15 A Correct.  
16 Q On the from line there is Kurutz comma Keith?  
17 A Yes.  
18 Q That's you?  
19 A Yes.

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37. PAGE 129:07 TO 130:11 (RUNNING 00:01:49.379)

07 Q Do you recall the circumstances of this e-mail?  
08 A Yes, I do.  
09 Q And what was that?  
10 A So here's the case before where we brought up Stony  
11 Brook University. Prior to the demo that I  
12 conducted, Stony Brook was using STR chemistry on  
13 their 3500xl instrument. They were looking to bring  
14 on our SeCore assay. And, again, the main question  
15 that we get from our HLA customers when we go to  
16 demo our SeCore on a CE instrument that is also  
17 being used for chimerism is, you know, will -- will  
18 these two assays work on the same instrument, and  
19 what can be done to make that as easy as possible  
20 for us.  
21 So, essentially, what I was doing here  
22 with this particular e-mail to Lisa was asking her  
23 whether -- so we have a particular configuration or  
24 a setup that we need on the CE instrument. In this  
25 case I mention 50-centimeter -- in this case, in  
00130:01 this e-mail, I mention a 50-centimeter array with  
02 POP6 or POP7 polymer. That is a particular  
03 configuration that we need for SeCore sequencing.  
04 However, that is outside of how the HID division  
05 intends their product to be used.  
06 So my question to Lisa is whether or not,  
07 you know, if the customer switches from a  
08 36-centimeter array POP4, which is the validated  
09 intended use with their -- their HID products, will  
10 the HID products work with a 50-centimeter array of  
11 POP6 or POP7.

38. PAGE 139:11 TO 139:14 (RUNNING 00:00:15.016)

11 Q Okay. Why do customers go to the POP6/POP7  
12 50-centimeter configuration for STR kits?  
13 A So that they can run both STR kits and HLA  
14 sequencing kits on the same instrument.

39. PAGE 140:07 TO 140:20 (RUNNING 00:00:53.821)

07 Q Okay. But one way to use what you have validated  
08 for HLA SeCore is to switch over to POP6/POP7 in the  
09 50-centimeter configuration?  
10 A With this particular instrument, yes.  
11 Q Okay. But now the customer who does that, who's  
12 working with STR kits, is no longer using what was  
13 validated for STR kits, am I right?  
14 A Correct.  
15 Q So basically the customer has to make a choice.  
16 They're either going to use the STR kits in the  
17 validated configuration, and use the SeCore HLA in a  
18 nonvalidated configuration, or use the SeCore HLA in  
19 a validated configuration, and use the STR kits in a  
20 nonvalidation configuration.

40. PAGE 140:22 TO 140:22 (RUNNING 00:00:00.861)

22 THE WITNESS: Yes.

41. PAGE 142:09 TO 143:02 (RUNNING 00:00:53.602)

09 Q Now, on the second sentence of this e-mail, you said  
10 to Lisa, "I've spoken to you in the past when I had  
11 questions about our HLA customers wanting to run our  
12 sequencing kits," and I'm going to skip what's in  
13 parentheses, "with the Identifiler kits for  
14 chimerism studies." Do you see that?

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15 A Yes.  
 16 Q Do you, in fact, recall speaking to Lisa in the past  
 17 on this topic?  
 18 A We've spoke before. I don't remember any particular  
 19 discussions, though.  
 20 Q Okay. Do you remember why you would've spoken to  
 21 her before about HLA customers wanting to run the  
 22 sequencing kits with the Identifiler kits for  
 23 chimerism studies?  
 24 A Same explanation as this particular scenario. So  
 25 customer is running the sequencing assay with an STR  
 00143:01 assay on the same instrument, how can they make that  
 02 work.

## 42. PAGE 172:10 TO 172:14 (RUNNING 00:00:20.455)

10 Q Mr. Kurutz, the Court Reporter has marked a  
 11 three-page document Exhibit 12. It's Bates stamped  
 12 in the bottom right corner Life-0144409 and it goes  
 13 to 44411. If you just take a look at that.  
 14 A Yes. Okay.

## 43. PAGE 174:14 TO 175:08 (RUNNING 00:00:58.585)

14 Q I'm going to skip over the next part for just a  
 15 second. We'll come back to it. The next paragraph  
 16 says "There are of course many other HLA sites using  
 17 the AB capital HID kits on either -- sorry, on other  
 18 CE instruments." Do you see that?  
 19 A Yes.  
 20 Q And what were you communicating there?  
 21 A So, again, "other CE instruments" being 3100 series,  
 22 3130 series.  
 23 Q And you were saying there are many other HLA sites  
 24 where the customer is using the ABI STR kits on the  
 25 instrument as well?  
 00175:01 A You know what? AB or Promega, but yes.  
 02 Q But this says AB.  
 03 A This particular e-mail, yeah.  
 04 Q Is it accurate?  
 05 A Yes. There are HLA labs that use AB STR kits as  
 06 well as Promega.  
 07 Q Many other as you say here?  
 08 A Yes.

## 44. PAGE 179:15 TO 180:04 (RUNNING 00:00:38.887)

15 Q And just so we get the terminology right. In that  
 16 third paragraph at the top of the first page of what  
 17 we've marked Exhibit 12, when you say AB HID kits,  
 18 you mean STR kits from ABI?  
 19 A Yes. Again, this is how I wrote this particular  
 20 e-mail.  
 21 Q Okay.  
 22 A But, again, HLA labs use, you know, either AB or  
 23 Promega.  
 24 Q Mm-mm. Okay. I just meant from terminology that  
 25 HID kits means STR kits.  
 00180:01 A Yes.  
 02 Q And AB means Applied Bio.  
 03 A Yes.  
 04 Q Okay.

## 45. PAGE 188:15 TO 188:24 (RUNNING 00:00:34.900)

15 Q I see. Okay. And is it fair to say this is a --  
 16 not uncommon occurrence where you would come and do  
 17 your HLA work, but you'd actually find out something  
 18 about what they're doing with STR kits in the lab?

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19 A Sure. I mean, we overhear conversation all the time  
20 while we're in labs.  
21 Q And then if it related to the STR kits, you'd try to  
22 relay that back to whoever in the HID team was  
23 responsible, you'd give them that information?  
24 A If it's warranted.

46. PAGE 188:25 TO 189:10 (RUNNING 00:00:32.527)

25 Q Okay. And, on occasion, you did?  
00189:01 A I can't recall anything specifically, but I may  
02 have.  
03 Q Okay. Did you visit other labs in a similar way as  
04 to this scenario with Stony Brook where you went in  
05 for the demo and you found out, to your surprise,  
06 about an issue with regard to STR kits that they  
07 brought up?  
08 A No. This is the only one that stands out.  
09 Q Okay. Can't remember any others?  
10 A No.

47. PAGE 205:21 TO 206:01 (RUNNING 00:00:15.118)

21 Q Okay. So basically this is a case where, in the  
22 course of you doing your -- and working out when  
23 you're going to do your HLA demo, you are able to  
24 provide the HID team some information about what the  
25 lab was doing with STR kits.  
00206:01 A Correct.

48. PAGE 224:12 TO 224:18 (RUNNING 00:00:15.365)


12 Q What do you mean by that, a research use only  
13 result?  
14 A The instrument is intended to be used for research  
15 use only.  
16 Q But it's sold to clinical labs.  
17 A Yeah.  
18 Q So it's not just being used for research.

49. PAGE 224:21 TO 225:02 (RUNNING 00:00:13.221)


21 THE WITNESS: The product is labeled as  
22 such. We don't police our customers on how they use  
23 the product.  
24 BY MR. CARROLL:  
25 Q But you've testified earlier today you know that  
00225:01 some of your customers use it for clinical purposes.  
02 A Correct.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:28:53.184)

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 **Ortuno, Lisa (Vol. 01) - 10/28/2011**

1 CLIP (RUNNING 01:45:49.703)

 QC020412

OV

89 SEGMENTS (RUNNING 01:45:49.703)



1. PAGE 12:13 TO 12:16 (RUNNING 00:00:08.239)

13 Q. Can you state your full name for the record.  
14 A. Yes. Lisa Marie Ortuno.  
15 Q. Okay. And where is your residence currently?  
16 A. I live in Columbia, South Carolina.

2. PAGE 14:23 TO 16:21 (RUNNING 00:01:44.389)

23 Q. Okay. Let's start with your background. What  
24 did you get your undergraduate degree in?  
25 A. In biology.  
00015:01 Q. Okay. Any specific area?  
02 A. No. It was just general biology.  
03 Q. Okay. And where was that?  
04 A. Kennesaw State University, north of Atlanta.  
05 Q. Okay. And what year?  
06 A. That was in 19- -- what year was that? It was  
07 a long time ago. '92.  
08 Q. Okay. And then after undergrad, where did you  
09 go?  
10 A. I worked for a while. And then I went to the  
11 University of South Carolina to get my master's degree  
12 and then my Ph.D.  
13 Q. Okay. Where did you work, was it technical?  
14 A. It was; at Emory University.  
15 Q. Okay. What type of work?  
16 A. I was a lab technician.  
17 Q. All right. Was there a particular discipline  
18 that you were working at, at Emory?  
19 A. It was in the neurology lab.  
20 Q. Okay. Did you have occasion to do PCR up to  
21 that point?  
22 A. No.  
23 Q. Okay. So then you went on to the University of  
24 South Carolina, and what year was that?  
25 A. That would have been 1996.  
00016:01 Q. Okay. And you said first to get a master's  
02 degree?  
03 A. Uh-huh.  
04 Q. And what was that in?  
05 A. That was also in biology with an emphasis on  
06 molecular biology and evolution.  
07 Q. Okay. Any particular aspect of molecular  
08 biology and evolution that you worked on?  
09 A. Yeah. It was mating systems in American  
10 alligators.  
11 Q. All right. Okay. In the course of your work,  
12 your molecular biology work, did you have occasion to do  
13 PCR there?  
14 A. Yes. Quite a bit.  
15 Q. Okay. And then you said from your master's,  
16 you went on for more schooling. Where was that?  
17 A. I just stayed in the same lab.  
18 Q. Same lab. Okay. Went on and got your Ph.D.?  
19 A. I did.  
20 Q. Okay. And what year was that?

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page 1

PTX1354

PTX1354\_0001

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21 A. 2002.

**3. PAGE 17:03 TO 17:10 (RUNNING 00:00:18.407)**

03 Q. Okay. So at this point, you're in South  
04 Carolina, 2002, you're done with your Ph.D. Where did  
05 you go?

06 A. I was actually hired by Applied Biosystems two  
07 weeks before I got my Ph.D.

08 Q. How did that happen?

09 A. They came and did a road show, and I told them  
10 I was going to need a job soon and I was hired.

**4. PAGE 18:12 TO 19:11 (RUNNING 00:00:50.046)**

12 Q. Okay. And this job, was it still in South  
13 Carolina or was it somewhere else?

14 A. It was based out of my home in South Carolina,  
15 but I traveled throughout the southeast and sometimes  
16 throughout the country.

17 Q. Okay. And did you have kind of a set district  
18 near your home that you were --

19 A. For the most part. It changed a little bit,  
20 but yes, for the most part.

21 Q. And that's southeast United States?

22 A. That's correct.

23 Q. As far as Florida?

24 A. Yes.

25 Q. Okay. And you said it was customer service?

00019:01 A. Yes. It was training customers in their labs  
02 whenever they would receive equipment from us.

03 Q. Okay. So if I understand that, then, there  
04 would first be a salesperson who would sell something to  
05 the customer?

06 A. That's correct. And we would assist with that  
07 sometimes.

08 Q. Okay. And then when that equipment got into  
09 the lab, then somebody had to train them how to use it,  
10 and that was your job?

11 A. Yes.

**5. PAGE 20:06 TO 23:02 (RUNNING 00:03:13.374)**

06 Q. So still in the 2002 period. How long did you  
07 keep the same position? In other words, was this  
08 something that went on for a number of years before you  
09 changed positions or was this something just initial and  
10 did you get increased responsibilities over time from  
11 2002?

12 A. So from 2002 to 2007, I worked in the same job,  
13 and that title was field applications specialist. And  
14 that was this job that I was telling you about. So I  
15 did the -- what was, again, called fragment analysis  
16 support and also sequencing support. And these were for  
17 government labs, university labs, research labs. It was  
18 mainly research labs, but not only research labs. Then  
19 in 2007, I changed roles and I went in-house to do  
20 technical support for the forensics group.

21 Q. Now, what do you mean by going "in-house"? I  
22 mean, weren't you in-house?

23 A. Yeah. I can clarify that. So perhaps that  
24 wasn't really accurate. What I meant by that is I  
25 changed roles. I still worked out of my own home, but  
00021:01 now instead of going out into the field to do trainings,  
02 I worked out of my home where I received calls. So they  
03 wired up my home to receive calls from customers that  
04 were working in forensics labs and other related labs,  
05 so I can receive phone calls and answer questions and do

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06 troubleshooting from home.  
07 Q. Okay. With that kind of as bookends, the 2002  
08 and then the 2007, let's talk about in the middle before  
09 we go to the transition in 2007.  
10 A. Okay. Excuse me.  
11 Q. This CE training that you would do, it would be  
12 more than just how to run the column, I would presume.  
13 Would it also involve read-out?  
14 A. Understanding the data, is that what you mean  
15 by that?  
16 Q. Right.  
17 A. Yes. Yes.  
18 Q. Okay. And was there a software system that you  
19 were familiar with for that?  
20 A. There was. There were a couple of different  
21 software packages, depending upon what the customer was  
22 doing.  
23 Q. Okay.  
24 A. What kind of work they were doing.  
25 Q. Now, were you familiar with those software  
00022:01 programs before you took the job at ABI?  
02 A. I was.  
03 Q. And how was that?  
04 A. Because, as a graduate student, I used them.  
05 Q. Okay. Had you had occasion to get training in  
06 software writing or software editing prior to working at  
07 ABI?  
08 A. I'm not sure I understand.  
09 Q. Well --  
10 A. The actual software -- writing the software  
11 itself?  
12 Q. Right. So that you could actually change it or  
13 customize it for the customer.  
14 A. No.  
15 Q. Okay. So as part of this training when the  
16 customer got a CE set up, you would go in and show them  
17 how to read the data?  
18 A. I would show them how to use the software, how  
19 to understand how it works with their data. We didn't  
20 do data interpretation necessarily, because that really  
21 wasn't within the scope of what we were supposed to do,  
22 but we explained to them how it worked and what the  
23 output was supposed to look like, especially if we were  
24 doing troubleshooting. So oftentimes we were doing  
25 troubleshooting, and if a customer had a problem, didn't  
00023:01 understand something, then we would try to explain that  
02 to them.

**6. PAGE 28:12 TO 28:17 (RUNNING 00:00:12.595)**

12 Q. You had mentioned forensic labs?  
13 A. Yes.  
14 Q. What about customers that were clinical labs,  
15 had clinical in their name, did you have those types of  
16 customers now also in this transition?  
17 A. I did.

**7. PAGE 31:07 TO 34:20 (RUNNING 00:04:06.819)**

07 Q. Okay. Well, if we move away then from the  
08 military and just talk about clinical customers using  
09 the kits. Let's clarify what the kits are. The kits  
10 are STR kits?  
11 A. Yes.  
12 Q. Okay. And these clinical customers were using  
13 the STR kits how?  
14 A. So -- may I make a clarification?

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15 Q. Oh, sure.  
16 A. Okay. Or ask a question maybe. So as far as  
17 the term "clinical," I don't come from a background -- a  
18 clinical or diagnostics background, so I don't know  
19 specifically what that means. So to me -- so what I'll  
20 say is there were, for example, hospitals that were  
21 using the kits. Is that what you're referring to?  
22 Q. Sure. That's fine. It might say in the  
23 customer name something clinic, it might say a  
24 transplant lab, it might say a cancer center, it might  
25 say a hospital or a --  
00032:01 A. Okay.  
02 Q. -- something like that.  
03 A. I just want to make sure we were talking about  
04 the same thing.  
05 Q. Yeah. No. That's fine.  
06 A. Okay. So, yes, people from hospitals or  
07 facilities like you mentioned might call in and say that  
08 they're interested in doing this application and I would  
09 speak with them about that.  
10 Q. Okay. And "this application" would be this use  
11 of STR kits?  
12 A. Yes.  
13 Q. Okay. Now, would these people, at this time  
14 where you're now wired up at your home, would they --  
15 these clinical customers, would they call you again  
16 directly through this number?  
17 A. They would, or e-mail, because we had an e-mail  
18 address as well.  
19 Q. Okay. And how did you get positioned to  
20 receive the clinical customers? Was that something from  
21 what you call the queue, I think, or was that something  
22 that all of the people in support were getting at this  
23 time?  
24 A. So it would depend on what time you're  
25 referring to. So again, I started in 2007, and so, very  
00033:01 slowly over time, I would get more of these. And what  
02 ended up happening was that, since I had the research  
03 background and experience using a variety of  
04 applications, right, not just forensic applications, it  
05 came to be understood that I understood the needs of  
06 these customers maybe a little bit better. And so  
07 people would start coming to me over time about it.  
08 It wasn't that there weren't any other people  
09 in our group that would answer these questions or assist  
10 in these types of applications, but I believe I was the  
11 main contact for that, but not the only contact.  
12 Q. Okay. And when you say your background was  
13 better suited to these clinical customers, we talked a  
14 little bit about your Ph.D. Was there an aspect there  
15 that helped out in particular with these clinical  
16 customers from your Ph.D. work that gave you this  
17 background?  
18 A. Yes. You could say that. So in the forensics  
19 community, they're what's called a validated market.  
20 And so the workflow is very streamlined. You can't  
21 deviate from the protocol. You have to treat the DNA in  
22 this way at this step and this way at this step, and you  
23 can't deviate. So other customers don't have those  
24 restrictions. And so perhaps one of these labs, like a  
25 hospital, for example, was not willing to quantify the  
00034:01 DNA in the way that we recommend as the validated  
02 protocol for an HID lab. Well, I might understand how  
03 to do that.  
04 Q. Okay.  
05 A. Even something as simple as using what's called

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06 a spectrophotometer.  
07 Q. Okay.  
08 A. Right. And the people in our HID group might  
09 not have any experience with that.  
10 Q. I see.  
11 A. So it is a very simple thing like that.  
12 Q. Okay. So in the case of -- if I understand  
13 your testimony, in the case of a forensic lab, they  
14 would have a specific way of quantitating the nucleic  
15 acid that they were going to multiplex with the STR kit,  
16 but the clinical labs could use some other technique for  
17 quantitating?  
18 A. That's correct.  
19 Q. Okay. And you could help them with that?  
20 A. That's true.

**8. PAGE 36:10 TO 36:13 (RUNNING 00:00:21.025)**

10 Q. Okay. Let's start with 2006 and then I'm  
11 moving into 2007. In the 2006 time frame, were you  
12 aware of clinical labs using ABI STR kits for a  
13 nonforensic use?

**9. PAGE 37:03 TO 37:09 (RUNNING 00:00:14.681)**

03 THE WITNESS: I believe I was.  
04 BY MR. CARROLL:  
05 Q. Okay. Had you supported any of those yourself?  
06 A. I believe I did.  
07 Q. Okay. And how would you do that in this period  
08 before the transition? Would you go into their labs?  
09 A. Yes.

**10. PAGE 38:03 TO 38:25 (RUNNING 00:01:29.340)**

03 Q. Dr. Ortuno, this is -- been marked by the  
04 reporter as Exhibit 6A. It's a single-page exhibit,  
05 Bates stamped Life-0514984. And this is just to see if  
06 this rings a bell and helps you recall any of the  
07 clinical customers that we've been talking about in  
08 2006.  
09 A. Okay. All right.  
10 Q. You had a chance to look it over?  
11 A. I did.  
12 Q. Okay. So we're talking about Exhibit 6A. And,  
13 Dr. Ortuno, this e-mail talks about a Canadian, I  
14 believe, customer, Saskatchewan Cancer Agency. Do you  
15 see that?  
16 A. I do.  
17 Q. Does that help you recall whether -- is a  
18 potential customer that you might have worked with?  
19 A. Yes.  
20 Q. Okay. And did you have occasion to go to  
21 Saskatchewan Cancer Agency and work with them?  
22 A. No. I've never been to Saskatchewan.  
23 Q. All right. Did you have occasion to work with  
24 them over the phone?  
25 A. The name looks familiar, so I believe I did.

**11. PAGE 39:10 TO 39:19 (RUNNING 00:00:37.353)**

10 (Exhibit 6B was marked for identification.)  
11 BY MR. CARROLL:  
12 Q. Okay. Dr. Ortuno, let me show you what's been  
13 marked Exhibit 6B. This is, again, from the same period  
14 and to see whether you would recognize this as a  
15 potential customer of this clinical nature that you  
16 might have worked with.  
17 A. Okay. All right.

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18 Q. Did you have a chance to look at that?  
19 A. I did.

**12. PAGE 40:04 TO 41:05 (RUNNING 00:01:23.153)**

04 Q. Okay. And the subject line talks about GM 4.0.  
05 Is that GeneMapper?  
06 A. It is.  
07 Q. Okay. And is the 4.0 indicating some kind of  
08 level?  
09 A. It indicates a particular version of  
10 GeneMapper.  
11 Q. Okay. And is that version of GeneMapper useful  
12 for all uses, some uses? How -- are they classified in  
13 that kind of way on a use base?  
14 A. So GeneMapper, there -- what evolved are two  
15 lines, what I call are types of GeneMapper software.  
16 For a long time, there was only what we would internally  
17 call the research version. There was nothing official  
18 about that. We just kind of referred to it internally.  
19 Q. And that was the research version. Did it have  
20 a number?  
21 A. So like any software, it goes through several  
22 versions. Right? So from 1.0 all the way through --  
23 and at some point, they split. Okay. So GeneMapper 4.0  
24 was a version that was sold primarily into research type  
25 labs, okay, or nonforensic labs, any lab that was not  
00041:01 doing forensic kits.  
02 Q. Okay.  
03 A. Versus the forensic version of GeneMapper,  
04 which came to be known first as GeneMapper ID and then  
05 another one called GeneMapper ID-X.

**13. PAGE 45:19 TO 49:07 (RUNNING 00:04:52.778)**

19 Q. Okay. So I skipped over Exhibit 5. So let me  
20 show this to you, Dr. Ortuno. Exhibit 5 has been marked  
21 by the reporter. It's a two-page document, Bates  
22 stamped Life-0223716 to 17.  
23 A. Okay. 2006. All right.  
24 Q. Okay. So we're talking about Exhibit 5. And  
25 let's go to the "Cc" line first, on the first page,  
00046:01 which ends with the Bates Number 16. Do you see that  
02 you're listed as Lisa M. Davis there?  
03 A. I do.  
04 Q. And do you recall receiving this e-mail?  
05 A. Vaguely.  
06 Q. Okay. Any question in your mind that this is a  
07 standard e-mail from the company?  
08 A. No.  
09 Q. Okay. Now, if you look at the "From" line,  
10 that's a Catherine M. Caballero, C-a-b-a-l-l-e-r-o.  
11 Who's that?  
12 A. She used to work for Applied Biosystems in the  
13 HID group. She was a field applications specialist for  
14 a while, and I think she then did training, but she  
15 hasn't been with Applied Biosystems for some years now.  
16 Q. Okay. So at this time period, and it indicates  
17 the e-mail was sent September 16, 2006, Ms. Caballero  
18 would have been senior to you?  
19 A. Probably. Yes.  
20 Q. Okay. And then this is written to Thomas J.  
21 McElroy. Who is that?  
22 A. He worked in-house, meaning in Foster City at  
23 Applied Biosystems, I believe, at that time, although  
24 he -- yeah, I believe he was. And he might have been  
25 the GeneMapper manager or product manager, but I don't

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00047:01 know.  
 02 Q. Okay. Was he senior to Ms. Caballero?  
 03 A. I don't know.  
 04 Q. Okay. Not somebody you interacted with on a  
 05 general basis?  
 06 A. No. Not a whole lot.  
 07 Q. Okay. Now on the "To" line -- sorry. On the  
 08 "Cc" line, there is a Melissa Kotkin. Is that somebody  
 09 you worked with extensively?  
 10 A. Yes.  
 11 Q. Okay. Was she support or sales?  
 12 A. Support.  
 13 Q. Okay. And then Michelle Shepherd, was she your  
 14 supervisor?  
 15 A. She was when I left. Yes.  
 16 Q. Okay. How many years was Michelle Shepherd  
 17 your supervisor?  
 18 A. From 2007, when I was hired into that position,  
 19 until I left.  
 20 Q. Okay. So she was on the hierarchy superior to  
 21 you?  
 22 A. Yes.  
 23 Q. Okay. Melissa, was she kind of at your level?  
 24 A. Yes.  
 25 Q. Okay. And then Michael J. Hughes, where did he  
 00048:01 fit in?  
 02 A. He was a field applications specialist for the  
 03 research side, so the side that I worked in previously.  
 04 So we were -- we had the same position, field  
 05 applications specialist, under what was called the  
 06 genetic analysis group.  
 07 Q. Okay. And I may have just picked up on it now,  
 08 because I'm a little slow, but you said in your previous  
 09 position, the research side. Let me ask you about what  
 10 you mean by that.  
 11 A. Okay. So the company has several divisions,  
 12 right, and so genetic analysis -- which is what it used  
 13 to be called. I don't know what it's called now -- was  
 14 the group that would sell into the government market and  
 15 academic universities. And then we, as field  
 16 applications specialists, would go do our training in  
 17 those kinds of labs.  
 18 Q. Okay.  
 19 A. Then the -- another business unit was the human  
 20 identification business unit, which came under different  
 21 titles, depending on what date it was.  
 22 Q. Okay. All right. So with respect to Michael  
 23 Hughes and the research side of the business, you think  
 24 he might have come from that?  
 25 A. That's where he worked.  
 00049:01 Q. That's where he worked. You're sure about  
 02 that?  
 03 A. Yes.  
 04 Q. Okay. And then there is you, Lisa M. Davis.  
 05 A. Uh-huh.  
 06 Q. Okay. That was your name at the time of 2006?  
 07 A. Yes.

## 14. PAGE 53:19 TO 59:19 (RUNNING 00:07:16.144)

19 Q. Here, let me help you again. No problem.  
 20 A. Okay.  
 21 Q. The second paragraph of this asks about -- and  
 22 I'm just reading now the second line -- "the work-around  
 23 that Lisa Davis compiled for both GM version 3.7 and  
 24 GM version 4.0."  
 25 A. Yes.

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00054:01 Q. This is why I thought you might be a code  
02 writer, by the way, when I saw this.  
03 A. I can see why you'd think that.  
04 Q. Okay. So when I saw this, I assumed you had  
05 done something to the GeneMapper software in some way.  
06 I didn't know --  
07 A. Okay.  
08 Q. -- what it was referring to --  
09 A. Okay.  
10 Q. -- but it sounded like you modified it or done  
11 something --  
12 A. Yeah.  
13 Q. -- with the word "work-around" --  
14 A. Okay.  
15 Q. -- and they attributed it to you. So again, I  
16 thought you're doing some kind of magic with the  
17 software to make it work. So maybe you can explain.  
18 A. No. The magic, as you call it, was just  
19 providing those customers with files that they would  
20 import into GeneMapper and then you can make the  
21 analysis work.  
22 Q. Okay. And what were those files? Where did  
23 those come from?  
24 A. They came out of the forensic version of  
25 GeneMapper.  
00055:01 Q. Okay.  
02 A. You would take them out of that program and  
03 send them to the customer and they would import them and  
04 then it would work.  
05 Q. Okay. So again, bear with me because I'm not a  
06 software guy, why would the GeneMapper version 4.0,  
07 which you said kind of split off for nonforensic --  
08 A. Uh-huh.  
09 Q. -- why would that need anything such as these  
10 files from the forensic? In other words, now I'm kind  
11 of like, why did you split it off? You see what I'm  
12 saying? I'm trying to understand what is missing. Why  
13 would you make a version for nonforensic and then have  
14 to go back and get some files to make it work?  
15 A. Well, I can't speculate on why specifically  
16 what you're asking. I just know that there was a  
17 version that was made specifically for forensics that  
18 was branched off from what was classically, again, I  
19 call the research version, and I imagine they had  
20 different programmers who had different scopes.  
21 Q. Okay.  
22 A. But I don't know why they made those decisions.  
23 Q. Okay. So we'll talk about why you made this  
24 decision. Why did you go do this work-around? Why --  
25 what prompted you to go get these files for these  
00056:01 nonforensic customers and put it into GeneMapper 4.0?  
02 A. Because these customers were running the HID  
03 kits and in order to do the analysis of the data, they  
04 needed to -- the full analysis of the data, they needed  
05 the files in order to complete that.  
06 Q. Okay.  
07 A. So as a part of customer service, I provided  
08 those files.  
09 Q. And how did you learn that they needed these  
10 files to complete that work, if you recall?  
11 A. You know, I don't recall exactly how I learned  
12 that, because I came in to the forensics group already  
13 knowing how to do that, and I don't recall if I learned  
14 it from another field applications specialist or where  
15 that initial knowledge came from.  
16 Q. Okay. Now, we've talked about GeneMapper

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17 version 4.0. This is GeneMapper version 3.7. Where  
 18 does that fit in the tree of GeneMappers? Is that on  
 19 the forensic side or the nonforensic?  
 20 A. Nonforensic side.  
 21 Q. Okay. And how does GeneMapper 3.7 differ from  
 22 GeneMapper 4.0, if you recall?  
 23 A. So clearly 3.7 is an earlier version. And then  
 24 for 4.0, the major difference was it enabled what's  
 25 called client server configuration. So it was just some  
 00057:01 feature upgrades that the research -- again, I'm calling  
 02 them researchers -- those customers had been asking for.  
 03 Q. Okay.  
 04 A. Just the next version.  
 05 Q. And these would have been these hospitals we're  
 06 talking about, et cetera, they'd be asking for this?  
 07 A. They would have been given the option to choose  
 08 which version that they wanted, most likely. And --  
 09 but, again, when I think of GeneMapper 4.0, the vast  
 10 majority of people that are purchasing that software are  
 11 probably researchers doing research fragment analysis or  
 12 those types of customers, but --  
 13 Q. Okay.  
 14 A. -- the hospital people got it as well.  
 15 Q. Okay. Now earlier when you said -- I didn't  
 16 stop you or interrupt you, but you used the frame -- the  
 17 term "HID kits," you're referring to the STR kits;  
 18 right?  
 19 A. Yes.  
 20 Q. Okay. I just wanted to make clear --  
 21 A. Sorry.  
 22 Q. -- because we've got shorthand going on today.  
 23 A. Yeah.  
 24 Q. I'll be doing the same thing.  
 25 A. We had multiple STR kits.  
 00058:01 Q. Okay. So now let me try to put together the  
 02 subject line and what's going on in this second  
 03 paragraph. The second paragraph at the beginning says,  
 04 "The main issue that we need resolution on is whether or  
 05 not we can supply customers with" this "work-around."  
 06 And this is in the context of this, what Ms. Caballero  
 07 is calling nontraditional HID. Do you remember this  
 08 episode at your time at ABI?  
 09 A. I remember discussions about this.  
 10 Q. Okay.  
 11 A. What specifically about this he was thinking  
 12 about when trying to decide whether or not we would  
 13 provide this, I don't know.  
 14 Q. Okay. I assume -- well, I'll ask you:  
 15 Ms. Caballero, by referring to "nontraditional HID," is  
 16 referring to nontraditional human identification that  
 17 would be nonforensic?  
 18 A. That's correct.  
 19 Q. Okay. So that would be for purposes other than  
 20 for human identification?  
 21 A. Well, the kits are always used for some kind of  
 22 human identification, right, so for purposes of other  
 23 than DNA forensics labs and paternity labs.  
 24 Q. Okay. Now, the third sentence of the second  
 25 paragraph says, "We have been told by Eric Vennemeyer."  
 00059:01 Who is Eric Vennemeyer?  
 02 A. He was another, I'll say, in-house person at  
 03 Applied Biosystems. I don't know what his role was at  
 04 that time.  
 05 Q. Okay. So it goes on and says, "to hold off on  
 06 providing this work-around...until it is tested." Do  
 07 you recall that?

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08 A. That is starting to sound familiar, yes.  
09 Q. Okay. And did you want to provide it to the  
10 customer at the time, if you recall?  
11 A. I wanted to help customers generate their data.  
12 Q. Okay.  
13 A. So...  
14 Q. And obviously if you generated this  
15 work-around, you thought they needed it?  
16 A. It would help them.  
17 Q. Okay. And then it goes on and says, "Because  
18 these customers are already using nonvalidated systems."  
19 What does she mean by that?

**15. PAGE 59:22 TO 61:13 (RUNNING 00:01:39.850)**

22 THE WITNESS: So these labs -- okay. So let me  
23 explain "validated" one more time.  
24 BY MR. CARROLL:  
25 Q. Okay.  
00060:01 A. Right. So as I had mentioned earlier, the  
02 forensic workflow we provide to customers for forensic  
03 labs, we test every step along the way. And it's every  
04 minute detail. And so, as I had mentioned, the hospital  
05 labs might do something a little bit different, like  
06 they're not going to quantify the same way. They may  
07 not run the CE instrument exactly the same way that we  
08 recommend in the HID group. And so that's what he's  
09 referring to, that these hospitals are probably not  
10 quantifying, using our Quantifiler kits. They may not  
11 be using the same polymer that we recommend, that kind  
12 of thing.  
13 Q. Okay. Just so we're clear on "polymer," this  
14 would be the material that actually goes into the  
15 capillary electrophoresis column?  
16 A. That's correct.  
17 Q. Okay. And I take it ABI sold a variety of  
18 polymer types?  
19 A. We did.  
20 Q. Okay. And would some of those polymer types be  
21 more suited to forensic uses versus nonforensic uses?  
22 Did they separate out like that?  
23 A. There was only one polymer that was validated  
24 for forensic use.  
25 Q. Oh. And what was that?  
00061:01 A. It was called POP4.  
02 Q. POP4?  
03 A. Uh-huh.  
04 Q. P-O-P 4?  
05 A. That's correct.  
06 Q. Okay. But there were other polymers that ABI  
07 sold?  
08 A. There were.  
09 Q. Okay. And were these polymers sold preloaded  
10 or was this something the customer had to pour into the  
11 capillary column?  
12 A. The customer chose that and put it on the  
13 instrument themselves.

**16. PAGE 61:23 TO 62:19 (RUNNING 00:01:02.373)**

23 Q. Okay. And then the last part of that sentence  
24 says, "they are willing to use a software work-around  
25 that has not been tested." Do you recall that, that  
00062:01 customers, such as hospital customers who are going to  
02 use STR kits, they were willing to use things that you  
03 could help them with that weren't necessarily validated  
04 for forensics?

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05 A. That's correct.  
06 Q. Okay. And then the last sentence says, "For  
07 what it is worth, customers have been successfully using  
08 GM version 3.7 and GM version 4.0 for over a year now  
09 with the files provided by Lisa and Mike." Do I take it  
10 then that, although they're talking about whether they  
11 can do it, in fact, you've already got customers out  
12 there doing it?  
13 A. Yes.  
14 Q. And this was as of 2006?  
15 A. Yes.  
16 Q. So essentially, you had already provided  
17 nonforensic customers, like hospitals doing STR work,  
18 this so-called work-around?  
19 A. Yes, I did.

**17. PAGE 63:05 TO 63:14 (RUNNING 00:00:35.327)**

05 Q. Dr. Ortuno, before the break, we were looking  
06 at Exhibit 5, and if we could still look at that a  
07 little bit. Down at the bottom of that document on the  
08 first page, which ends with the Bates Numbers 16, there  
09 is, up from the bottom, be like three lines, it says,  
10 "Melissa and Michelle Shepherd will also maintain a  
11 list" -- and I think there should be an "of" there -- of  
12 "NTH customers and how often they are requiring  
13 support." Do you see that?  
14 A. I do.

**18. PAGE 63:15 TO 63:21 (RUNNING 00:00:25.083)**

15 Q. Was such a list made, to your knowledge?  
16 A. Not that I've ever seen.  
17 Q. Okay. So you didn't operate, at your time --  
18 at any time when you were at ABI, with a list that would  
19 identify nontraditional customers such as hospitals that  
20 were using STR kits?  
21 A. No.

**19. PAGE 63:22 TO 64:16 (RUNNING 00:00:49.367)**

22 Q. Okay. And today we've been talking about those  
23 customers as nonforensic customers, so let me just get a  
24 little clarity around that. Those nonforensic  
25 customers, what type of purpose would they be putting  
00064:01 the kit to in those hospitals?  
02 A. They would have done an application called bone  
03 marrow engraftment monitoring.  
04 Q. Okay.  
05 A. Also called chimerism or BME. Another  
06 application, something called MCC --  
07 Q. Okay.  
08 A. -- which stands for maternal cell  
09 contamination.  
10 Q. Okay.  
11 A. And another application that I supported was  
12 something called cell line authentication.  
13 Q. Okay. Anything else?  
14 A. Sample ID.  
15 Q. Okay.  
16 A. Just simple sample ID was another one.

**20. PAGE 65:21 TO 67:08 (RUNNING 00:01:51.446)**

21 Q. Okay. Okay. All right. Now, back to  
22 Exhibit 5, the second line up from the bottom on the  
23 first page that's Bates stamped for the number that ends  
24 16, it says, "HID Tech Support forwards all NTH calls to  
25 Melissa." Do you see that?

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00066:01 A. I do.  
02 Q. Now, again, this document's marked September --  
03 dated September 16th, 2006. Was that the way things  
04 were routed, to your knowledge, in 2006, that Melissa  
05 was getting all these nonforensic customer calls?  
06 A. Well, I wasn't a part of the group at that  
07 time.  
08 Q. Right.  
09 A. Right. So I don't remember being aware of that  
10 specifically.  
11 Q. Okay.  
12 A. But if that's how they did it, then...  
13 Q. Well, let me ask you this: In the transition  
14 when they wired your home up, how did Melissa, if at  
15 all, how did she fit into this group that was going to  
16 handle calls from nonforensic customers?  
17 A. So when I joined, I became the second or third  
18 person doing remote tech support for HID.  
19 Q. Okay.  
20 A. Melissa was a field applications specialist,  
21 along with a handful of others, who would go out and do  
22 the training on site to these labs. And so clearly,  
23 Melissa was doing a lot of that support for these labs  
24 before I came onboard and then we all just worked  
25 together --  
00067:01 Q. Okay.  
02 A. -- to help them.  
03 Q. And in your work with Melissa at ABI for the  
04 whole period, based on that, can you tell me if  
05 Melissa -- and this is Melissa Kotkin -- would she have  
06 then knowledge, prior to your transition in 2007, of how  
07 ABI supported these nonforensic labs, like hospitals for  
08 STR kits?

**21. PAGE 67:11 TO 67:25 (RUNNING 00:00:44.336)**

11 THE WITNESS: I don't know to what detail she  
12 would have been able to do that.  
13 BY MR. CARROLL:  
14 Q. Okay. And the reason I ask the question that  
15 way, just so you can see, I assume when you joined, you  
16 know, all of us have joined new teams, that you try to  
17 find out who your teammates are, ask what they know,  
18 what have they been doing in the past, have you ever  
19 seen this kind of thing before. And so I'm asking the  
20 total knowledge that you got from joining that team and  
21 interacting with Melissa Kotkin. On the basis of that,  
22 can you tell me: Would she have had knowledge of how  
23 ABI supported nonforensic labs for STR kits prior to  
24 your transition into the team?  
25 A. I believe she --

**22. PAGE 68:02 TO 68:02 (RUNNING 00:00:01.454)**

02 THE WITNESS: -- would have had some.

**23. PAGE 68:04 TO 68:14 (RUNNING 00:00:36.504)**

04 Q. Okay. I had one more question on this  
05 document. I just forgot it. Oh, yes. I've looked in  
06 other documents for this phrase "nontraditional." Is  
07 that a phrase -- once you joined and made this  
08 transition, is that a phrase you used, this  
09 nontraditional language to indicate nonforensic  
10 customers?  
11 A. Yes. I'm sure I did. And there were several  
12 ways that we designated them from nontraditional to  
13 nonforensic to non-HID. There was no official

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14 terminology.

**24. PAGE 84:10 TO 85:05 (RUNNING 00:01:00.861)**

10 Q. All right. Dr. Ortuno, let me show you what  
11 the court reporter has marked as Exhibit Number 12. It  
12 is a single-page document, Life-0253767.

13 A. Okay.

14 Q. Have you seen this document before?

15 A. Yes.

16 Q. And in what context?

17 A. This is an org chart, and it could have been  
18 shown at a meeting. It could have been shown on a  
19 conference call. There are any number of times and  
20 places that something like this would have been shown.

21 Q. Okay. Now, at the bottom of the organizational  
22 chart, there is a date there. I think it's 2006. Do  
23 you see that?

24 A. Yes.

25 Q. And at that time -- you have a little box  
00085:01 there, "Lisa Ortuno." Do you see that?

02 A. Yes.

03 Q. And you're under "Michelle Shepherd" in this  
04 organizational chart?

05 A. Yes.

**25. PAGE 87:16 TO 88:09 (RUNNING 00:00:51.153)**

16 Q. Okay. Did you have occasion to also keep  
17 informed some salespeople of your activities --

18 A. Yes.

19 Q. -- in this regard?

20 And who would those people be?

21 A. They would be the sales reps that happened to  
22 be the account managers for that particular institution  
23 that I was working with.

24 Q. Okay. And on this organizational chart, which  
25 we have marked as Exhibit 12, is the sales team that you  
00088:01 just referred to that you interacted with represented?

02 A. There's been some change, but yes, many of the  
03 people are represented here.

04 Q. Okay. So I see Dawn Waltman on the left side.

05 A. Correct.

06 Q. That's somebody you were interacting with  
07 regularly for these nonforensic customers for STR kit  
08 use?

09 A. Yes.

**26. PAGE 89:06 TO 89:13 (RUNNING 00:00:14.046)**

06 Q. All right. And what about Annie Ingold?

07 A. Amie; yes.

08 Q. Amie?

09 A. I believe she is with the company, and I did  
10 interact with her frequently.

11 Q. For nonforensic customer support?

12 A. For all kinds of forensic and nonforensic  
13 customer support.

**27. PAGE 91:25 TO 92:13 (RUNNING 00:01:07.988)**

25 Q. Dr. Ortuno, I've got what's been marked by the  
00092:01 court reporter Exhibit Number 14. It is a single-page  
02 document, Bates stamped Life-0031290. If you can take a  
03 look at that.

04 A. Okay.

05 Q. Okay. Dr. Ortuno, on this particular document,  
06 the "From" line indicates Lisa M. Ortuno. Do you see  
07 that?

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08 A. Yes.  
09 Q. And do you recall composing this e-mail?  
10 A. Very vaguely.  
11 Q. Okay. No question in your mind, though, that  
12 this is something you composed?  
13 A. No, no question.

28. PAGE 92:21 TO 94:17 (RUNNING 00:02:42.489)

21 Q. Okay. And the "To" line is Candia L. Brown.  
22 Who is that?  
23 A. So Candia was a employee -- was an employee of  
24 Applied Biosystems for a number of years. She worked on  
25 a number of products. She was not specific to the HID  
00093:01 group and, to my knowledge, she has not been there for  
02 some years.  
03 Q. Okay. And for what reason were you  
04 communicating with Candia, if you recall?  
05 A. So stem cell work was a focus of the company  
06 for a while and I imagine is still the same thing. And  
07 there are a number of applications and technologies that  
08 are used for various facets of stem cell work, and she  
09 was clearly involved with that. And so I believe that  
10 was the purpose of this interaction.  
11 Q. And was one of the relevant technologies to  
12 stem cell work cell line authentication with ABI STR  
13 kits?  
14 A. So it was mentioned as a tool that could be  
15 used for identifying the cells, yes.  
16 Q. Okay. Now, in the "Cc" line, there is  
17 "Michelle Shepherd," who was your supervisor at this  
18 time?  
19 A. This is 2008. So yes, that's correct.  
20 Q. So was it your habit to copy Michelle Shepherd  
21 in this way so she'd stay informed with what you were  
22 doing?  
23 A. Yes, I often did.  
24 Q. Okay. And at this point, you're married and  
25 name is now Lisa Ortuno?  
00094:01 A. Yes.  
02 Q. Okay. Now, in the second paragraph, it says,  
03 "Anyway, I am not sure if you are aware, but Dawn  
04 Waltman is the Sales Lead for the" HID's -- "HID  
05 group's," quote, "Non-HID," space, "HID," all caps,  
06 close quote, "accounts." Do you see that?  
07 A. I do.  
08 Q. What on earth does "Non-HID HID" mean?  
09 A. So as I had referred to earlier, we've used  
10 various terminology for institutions that are using  
11 these HID kits, but they're not DNA forensic labs. And  
12 so this is another one of those terminologies, non-HID,  
13 nontraditional, nonforensic HID accounts.  
14 Q. Got it. Okay. How was it that Dawn Waltman  
15 became the sales lead for these non-HID accounts, if you  
16 know?  
17 A. She was assigned that.

29. PAGE 94:18 TO 95:03 (RUNNING 00:00:19.326)

18 Q. By whom?  
19 A. By Gerry Andros, is my understanding.  
20 Q. Okay. So Gerry Andros, just so we get back --  
21 A. I'm sorry. I need to pause for just a moment.  
22 Q. That's okay.  
23 A. I need to retract that.  
24 Q. Okay.  
25 A. Because I don't know that for sure.

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00095:01 Q. Okay. You suspect it?  
02 A. I'd just like to retract it, because I really  
03 am not sure at all about it.

**30. PAGE 95:04 TO 97:04 (RUNNING 00:02:15.741)**

04 Q. Okay. Not having worked in the company,  
05 though, I still have to ask you: This doesn't just  
06 happen because Dawn Waltman wants to do something;  
07 right? She has to get approval?  
08 A. So all the sales reps are given opportunity to  
09 choose different projects that they would like to work  
10 on, specifically, projects or instruments or product  
11 lines.  
12 Q. Okay.  
13 A. So somehow within the sales group, they were --  
14 it was determined which salesman would do which thing.  
15 Q. Okay. But something like that would have to  
16 have been blessed by somebody senior to Dawn?  
17 A. Yes.  
18 Q. Okay. Based on your experience at the company?  
19 A. Yes.  
20 Q. All right. Now, the next sentence says, "This  
21 means she is a point person for sales for accounts using  
22 STR kits in nonforensics settings." What does that mean  
23 to be a point person? Is that internal, external? What  
24 does that mean?  
25 A. So what that means is whenever you're a point  
00096:01 person for one of these applications or products, that  
02 means that if other people have a question about it,  
03 about the details of it, they would be the one that they  
04 would go to.  
05 Q. So internally, another salesperson has a  
06 question, they go to Dawn?  
07 A. Yes.  
08 Q. Okay. What about externally, is the point  
09 person still -- term still applicable here for Dawn?  
10 A. Yes. I think the accounts, depending on what  
11 was going on with them, if they were in a different  
12 territory, Dawn might have been notified of that.  
13 Q. Okay. Okay. And then you go on and say, and  
14 this is your e-mail, you're saying, "I am now working in  
15 the HID group and I am the Tech Support Lead for these  
16 accounts as well." Do you see that?  
17 A. Yes.  
18 Q. And was that accurate?  
19 A. Yes.  
20 Q. Okay. And how did that happen? How did you  
21 become the tech support lead for these non-HID accounts?  
22 A. Michelle, my manager, and I talked about that.  
23 Q. Okay. And how did that go?  
24 A. Because of my experience in the previous group,  
25 and she was aware of my background, not just being in  
00097:01 forensics, she thought I would be an asset to the team  
02 because I had knowledge -- knowledge and skills --  
03 knowledge base and skill-set that the other members of  
04 the team didn't have.

**31. PAGE 97:20 TO 98:07 (RUNNING 00:00:39.367)**

20 Q. Okay. So is it fair to say that the decision  
21 regarding you becoming the tech support lead for these  
22 nonforensic customers, that would include supporting  
23 activities, such as STR kit use for bone marrow  
24 engraftment, that that was something that Michelle  
25 Shepherd, as your superior, understood?  
00098:01 A. Yes.

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02 Q. Okay. No question in your mind?  
03 A. No.  
04 Q. Okay. Did you have numerous conversations over  
05 the time you were at ABI with regard to those duties as  
06 tech support lead?  
07 A. We did.

**32. PAGE 98:24 TO 99:19 (RUNNING 00:00:55.765)**

24 Q. Okay. Now, the next sentence, in parentheses,  
25 confuses me, but that's just because I don't understand  
00099:01 the organization here. It says, "(Melissa Kotkin is the  
02 FAS lead)." How is Melissa Kotkin the FAS lead, which  
03 is field applications specialist, when you're the tech  
04 support lead? I thought field applications specialists  
05 did tech support?  
06 A. No. No. They're two different roles.  
07 Q. Oh, help me out. What is Melissa doing?  
08 A. So field applications specialists are the ones  
09 that go out and do trainings in the field all the time.  
10 Q. Okay.  
11 A. They don't stay at home and man the phones.  
12 Tech support are the people who tend to stay at home and  
13 take calls.  
14 Q. Okay. And you indicated earlier in your  
15 testimony, you interacted in your years at ABI with  
16 Melissa Kotkin?  
17 A. Yes.  
18 Q. Extensively?  
19 A. Yes.

**33. PAGE 99:20 TO 99:23 (RUNNING 00:00:11.928)**

20 Q. Okay. Based on that, did she, in fact, go out  
21 to nonforensic customers and train?  
22 A. I don't know of a specific example that she did  
23 that.

**34. PAGE 100:05 TO 100:14 (RUNNING 00:00:25.110)**

05 Q. Did you -- do you recall Melissa Kotkin ever  
06 coming to you, saying, "Hey, Lisa. I've got a  
07 nonforensic customer. I've got some questions. Can you  
08 help me"?  
09 A. I'm sure that happened.  
10 Q. Okay. Now, you mentioned that this e-mail was  
11 prompted by a desire to go to a meeting. The next  
12 sentence passed Melissa Kotkin, says: "I'd like to  
13 attend the stem cell symposium. Do you see that?"  
14 A. I do.

**35. PAGE 100:15 TO 100:16 (RUNNING 00:00:06.913)**

15 Q. And do you recall the circumstances of this?  
16 A. Not so much, because we ended up not going.

**36. PAGE 100:22 TO 101:19 (RUNNING 00:01:17.271)**

22 Q. Okay. And it indicates you were aware of some  
23 papers and you mention a Nardone paper?  
24 A. Yes.  
25 Q. What paper is that?  
00101:01 A. So I don't remember the reference exactly, but  
02 there was a "white paper" by Roland Nardone in which  
03 he -- it was "A Call To Action" for principal  
04 investigators using cell culture and cell lines, where  
05 it has been shown repeatedly that the cells that  
06 researchers think they're using are, in fact, not the  
07 cells that they're working with because of

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08 contamination. And so that was the paper --  
09 Q. Okay.  
10 A. -- I'm referring to.  
11 Q. And is that what is driving now the cell line  
12 authentication market is this desire to straighten this  
13 out and make sure you're working with the cells that you  
14 think you're working with?  
15 A. Absolutely.  
16 Q. Okay. In your experience while you were at  
17 ABI, did that market grow, STR kit use for cell line  
18 authentication?  
19 A. It did, but not immensely.

**37. PAGE 101:20 TO 101:24 (RUNNING 00:00:16.912)**

20 Q. Okay. Did you have occasion to be familiar  
21 with other publications, other than the Nardone one,  
22 that describe the use of STR kits for cell line  
23 authentication?  
24 A. It's not coming to mind.

**38. PAGE 127:19 TO 129:03 (RUNNING 00:01:26.071)**

19 Q. Okay. Did you have occasion to train  
20 university core labs on STR kit use?  
21 A. I'm thinking. On general STR kit use?  
22 Q. Yes.  
23 A. I'm thinking. So, okay. I just want to make  
24 sure we're accurate. When you say "train" them, do you  
25 mean provide them with presentation material or just  
00128:01 talk to them about STR kit use?  
02 Q. Talking is fine.  
03 A. Yes. I've done that.  
04 Q. Okay. And so when you would talk to them about  
05 STR kit use -- this is these university core labs --  
06 would you discuss a specific use such as cell line  
07 authentication?  
08 A. Usually what -- yes, what they were  
09 particularly interested in, in university settings, was  
10 often cell line authentication, yes.  
11 Q. Okay. And any particular universities you can  
12 remember that you had these types of conversations?  
13 A. Duke.  
14 Q. Okay.  
15 A. UNC Chapel Hill.  
16 Q. Okay.  
17 A. Oh, goodness. MD Anderson.  
18 Q. Okay.  
19 A. University of Colorado, Christopher Korch's  
20 lab.  
21 Q. Okay.  
22 A. And there were others, but I can't remember  
23 right offhand.  
24 Q. Okay. And after you had these conversations,  
25 did any of those particular ones that you mentioned, in  
00129:01 fact, purchase an ABI STR kit for cell line  
02 authentication?  
03 A. They did.

**39. PAGE 129:12 TO 129:15 (RUNNING 00:00:18.239)**

12 Q. Okay. When you left ABI, Life Tech recently,  
13 were you aware of university core labs purchasing STR  
14 kits for cell line authentication?  
15 A. Yes.

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**40. PAGE 129:19 TO 130:04 (RUNNING 00:00:23.199)**

19 Q. You mentioned Duke, Chapel Hill, a couple  
20 others. I take it the total customer base for cell line  
21 authentication for ABI STR kits for university core labs  
22 is larger than that?  
23 A. Yes.  
24 Q. Okay. Can you give me a sense of how much  
25 larger?  
00130:01 A. I really don't know for sure. I don't know.  
02 15 or 20.  
03 Q. Okay. And these are across the United States?  
04 A. Uh-huh.

**41. PAGE 132:13 TO 134:05 (RUNNING 00:03:00.974)**

13 Q. Dr. Ortuno, let me show you what's been marked  
14 Exhibit 17. It's a three-page document, Bates stamped  
15 Life-0309952 to 54.  
16 A. Okay.  
17 Q. Okay. Now, when we were looking at Exhibit 15  
18 a minute ago, we talked about the fact that Dawn had  
19 mentioned the need for a PowerPoint. And that was in  
20 September of 2008. This exhibit is from 2009. And if  
21 you go to the last -- second to last page, as is typical  
22 with e-mail, the first e-mail starts on the bottom of  
23 that and carries over. It appears to be from Guido  
24 Sandulli. Do you see that?  
25 A. Yes. Okay. I see that.  
00133:01 Q. And he says, "Team," and if you look at the  
02 "To" line, you're on there, Lisa M. Ortuno. Do you see  
03 that?  
04 A. Yes. Okay. Yes.  
05 Q. It says, "Team -- see the draft PowerPoint I  
06 put together." Do you see that?  
07 A. Yes.  
08 Q. Do you recall receiving this e-mail from Guido?  
09 A. Not specifically.  
10 Q. Okay. Do you know why he was putting this  
11 PowerPoint together?  
12 A. I don't recall.  
13 Q. Okay. Now, if you go to the first page of  
14 Exhibit 17.  
15 A. Okay.  
16 Q. This is an e-mail you authored; right?  
17 A. Yes. Yes.  
18 Q. And this is an e-mail back to Guido Sandulli  
19 with your comments on his PowerPoint; correct?  
20 A. That's what it looks like.  
21 Q. Do you recall this?  
22 A. I don't recall specifically writing it, but I'm  
23 familiar with this content --  
24 Q. Okay.  
25 A. -- what he's talking about.  
00134:01 Q. Okay. And any question that this is an e-mail  
02 that you authored?  
03 A. No.  
04 Q. No doubt?  
05 A. Huh-uh.

**42. PAGE 134:18 TO 135:09 (RUNNING 00:00:40.203)**

18 Q. Okay. Now, the subject line of the e-mail that  
19 you authored says, "STR kits for cell line ID." Do you  
20 see that?  
21 A. Yes.  
22 Q. And that's cell line authentication?  
23 A. Yes.

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24 Q. Okay. And do you recall whether you were  
25 looking at slides of the PowerPoint and commenting?  
00135:01 A. Yes, I must have, because there are slide  
02 references.  
03 Q. Okay. And in the second paragraph, you comment  
04 on Slide 3, you say, "Maternal cell contamination is  
05 another 'clinical' assay." Do you see that?  
06 A. I do.  
07 Q. Do you recall communicating that?  
08 A. I don't recall specifically writing this, but I  
09 don't deny that I did.

**43. PAGE 135:10 TO 135:12 (RUNNING 00:00:05.962)**

10 Q. Okay. And is maternal cell contamination  
11 another clinical assay?  
12 A. I really don't know if it is or not.

**44. PAGE 135:13 TO 138:19 (RUNNING 00:03:49.799)**

13 Q. Okay. Now, you give some examples of  
14 customers, including Emory University, Genzyme, Artemis  
15 and others. Do you see that?  
16 A. Yes.  
17 Q. And I take it at this time, in 2009 when you  
18 were writing this, these were examples of ABI customers  
19 using STR kits for maternal cell contamination?  
20 A. Yeah. That must have been what I was thinking  
21 at that time, yes.  
22 Q. Okay. And then under that Slide 3, you  
23 indicate you spoke with Katherine Hale at MD Anderson.  
24 Do you see that?  
25 A. Yes.  
00136:01 Q. Did you, in fact, speak with Katherine Hale at  
02 MD Anderson?  
03 A. I did.  
04 Q. Who is Katherine Hale?  
05 A. She was the -- I believe was the director of  
06 one of the core labs at MD Anderson.  
07 Q. Okay. And it goes on, it says, she's "going to  
08 implement a cell line ID service." Do you see that?  
09 A. Yes.  
10 Q. And that, again, is a cell line authentication  
11 service?  
12 A. Yes.  
13 Q. And as a service, this would be something that  
14 other people could come to, to get their cell lines  
15 authenticated?  
16 A. Yes.  
17 Q. Okay. Did, in fact, MD Anderson create such a  
18 service?  
19 A. That was my understanding, yes.  
20 Q. Okay. And did you help Katherine Hale?  
21 A. I did.  
22 Q. And what did you do?  
23 A. I worked with the technicians in the lab to  
24 understand how to use the kit, as I would with any  
25 forensic customer, provided the protocol, and explained  
00137:01 about the data analysis using GeneMapper. I don't  
02 remember which version it was. And just helped them get  
03 their workflow going.  
04 Q. Okay. Do you remember what kit it was?  
05 A. I don't.  
06 Q. And we mentioned a bunch of them.  
07 A. Yeah.  
08 Q. It would have been one of those, Identifiler --  
09 A. Yes.

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10 Q. -- something like that?

11 A. Yes.

12 Q. Okay. Slide 4, if you look for that down the  
13 left side, you bring up the topic of "homebrew." Let's  
14 talk about that. Did you, at your time in ABI, wide  
15 open, total time, run into prospective customers who  
16 were doing cell line authentication with home-brew  
17 assays?

18 A. Yes.

19 Q. And what type of assay is a home-brew assay for  
20 cell line authentication?

21 A. So any time they're using a noncommercial kit,  
22 generally speaking, is a home-brew assay. So they may  
23 have their own primers that they use that are going to  
24 do generally the same thing, so generate a unique  
25 identifier for that sample. So anything of that sort.

00138:01 Q. Okay. And while you were at ABI, total time  
02 period, did you have occasion to convince these  
03 home-brew -- these labs using the home-brew kit for --  
04 maybe I should say home-brew assay for cell line  
05 authentication, did you have occasion to convince them  
06 to switch over to a commercial kit, such as an ABI STR  
07 kit?

08 A. I believe I did. I can't remember specifically  
09 which of those labs were doing that.

10 Q. Okay. And what would be the advantages of a  
11 commercial kit like an ABI STR kit for cell line  
12 authentication versus home-brew?

13 A. They're easy to use. They're like cookbook  
14 recipe in the protocol. The reagents are QC'd. Those  
15 types of advantages.

16 Q. Okay. So the home-brew stuff, they don't have  
17 a quality control department at these nonforensic labs.  
18 They're just kind of making it up as they go?

19 A. Right.

**45. PAGE 140:16 TO 140:22 (RUNNING 00:00:20.061)**

16 Q. Okay. Now, going back to the first page of  
17 Exhibit 17, there is some numbered paragraphs at the  
18 bottom. First one is to "Continue to collaborate with  
19 thought leaders to determine which...kits will provide  
20 the solution." And is the solution for cell line  
21 authentication?

22 A. Yes.

**46. PAGE 141:08 TO 142:23 (RUNNING 00:01:36.970)**

08 Q. As you mentioned. Okay. Okay. Paragraph  
09 Number 2 on the front page of Exhibit 17 says, "Keep a  
10 close eye on Promega as they are aggressively going  
11 after this market." Do you see that?

12 A. I do.

13 Q. Do you remember communicating that?

14 A. I'm sure I did. I don't remember typing it,  
15 but I did.

16 Q. Okay. And was it accurate at the time?

17 A. I believe so.

18 Q. Okay. And how did you know that Promega was  
19 aggressively going after the market?

20 A. Because customers would call in and they would  
21 say sometimes that they're using Promega chemistry or  
22 they're considering using Promega chemistry, so they  
23 told us.

24 Q. Okay. And did you have an occasion to interact  
25 with such a customer and try to convince them to drop  
00142:01 Promega and use ABI STR kits for cell line

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02 authentication?  
03 A. Yes.  
04 Q. Okay. And did Ms. Shepherd know you were  
05 making such suggestions?  
06 A. Yes.  
07 Q. Did upper management know?  
08 A. Who is "upper management"?  
09 Q. Andros. I may be saying his name wrong.  
10 A. Gerry?  
11 Q. Yes.  
12 A. I imagine he did.  
13 Q. Okay. And were you ever successful in  
14 convincing a customer, who was using Promega for cell  
15 line authentication, to switch to ABI STR kits?  
16 A. I get confused whether it is a BME lab or a  
17 cell line lab making switches, so I can't remember  
18 specifically.  
19 Q. Okay. So let's be more general. Without  
20 regard to whether it was cell line authentication or  
21 BME, did you have occasion to convince a customer using  
22 Promega STR kits to switch to ABI STR kits?  
23 A. I did.

**47. PAGE 142:24 TO 143:01 (RUNNING 00:00:05.373)**

24 Q. Okay. And do you remember any particular  
25 customer? I know that's hard.  
00143:01 A. I can't.

**48. PAGE 144:05 TO 145:14 (RUNNING 00:01:14.240)**

05 Q. And at the end of that, it says, "Promega says  
06 Identifiler is overkill." Do you see that?  
07 A. Yes.  
08 Q. Do you remember communicating that?  
09 A. Yes.  
10 Q. How did you learn that?  
11 A. Because that's what customers told us.  
12 Q. And that's why they were working -- they told  
13 you that's why they were using Promega kits for cell  
14 line authentication?  
15 A. Yes, because Promega produced -- I don't know  
16 if they still do -- a kit that had a smaller number of  
17 markers.  
18 Q. Okay.  
19 A. And Identifiler had more markers, so Promega  
20 said, "You don't need that many. It's overkill."  
21 Q. And from a technical standpoint, was it true  
22 that Identifiler probably had more markers than you  
23 needed?  
24 A. It depends.  
25 Q. Okay.  
00145:01 A. It's one of those where it depends on the  
02 situation.  
03 Q. Okay. In some cases, Identifiler was just what  
04 somebody needed for cell line authentication?  
05 A. Right.  
06 Q. Okay. Now, going back to the front page,  
07 Number Paragraph 5, says, "Provide training to the  
08 support staff," parentheses, "(HID FAS) on this market  
09 and how to train these customers." Do you see that?  
10 A. Yes.  
11 Q. Do you remember communicating that?  
12 A. Vaguely.  
13 Q. Did this happen?  
14 A. No.

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49. PAGE 172:15 TO 173:22 (RUNNING 00:01:32.510)

15 Q. Okay. All right. Dr. Ortuno, the court  
16 reporter has marked as Exhibit 23 a two-page document,  
17 Bates stamped 0522672 to 73. Let me show you that.  
18 Okay. Now, this is an e-mail where the second page  
19 appears to be identical to the exhibit we just saw. Do  
20 you see that?  
21 A. I do.  
22 Q. Okay. However, the front page is Michelle  
23 Shepherd responding to your e-mail. Do you see that?  
24 A. I do.  
25 Q. Okay. Do you recall Michelle Shepherd sending  
00173:01 you this?  
02 A. Not specifically.  
03 Q. Okay. She seems to be pretty pleased with your  
04 work here; is that right?  
05 A. It looks like it.  
06 Q. "Great work here." Was she frequently saying  
07 that to you in e-mails?  
08 A. Yes. She's a very good manager and she pumps  
09 up her team.  
10 Q. That's great. And she noted that you caught  
11 the problem with the ramp time changes we just talked  
12 about. Do you see that?  
13 A. Yes.  
14 Q. Does this help you recall this communication?  
15 A. I recall the event. I just didn't recall  
16 specifically this e-mail. Yes.  
17 Q. Okay. So Michelle Shepherd was clearly aware  
18 of your attempts to get ATCC to get the Identifiler to  
19 work for cell line authentication?  
20 A. That's correct.  
21 Q. In fact, was quite pleased with your efforts?  
22 A. Yes, she was.

50. PAGE 176:05 TO 177:06 (RUNNING 00:01:46.955)

05 Q. Okay. Dr. Ortuno, let me show you an exhibit  
06 that's been marked Number 25. It is a two-page exhibit,  
07 Life-0150859 to 60. Let me show you that. Let's start  
08 on the front page. Is that an e-mail you authored?  
09 A. It is.  
10 Q. To Dawn Waltman?  
11 A. Yes.  
12 Q. In the ordinary course of communicating with  
13 Dawn while you were at ABI?  
14 A. Yes.  
15 Q. Okay. And does this discuss, at least in part,  
16 your efforts to get ATCC to use the ABI STR kit for cell  
17 line authentication?  
18 A. Yes.  
19 Q. Okay. Now, there are a number of paragraphs  
20 that are numbered. The first one says that part of the  
21 agenda you're recommending is a discussion of, quote,  
22 "our internal cell line profiling project." Do you see  
23 that?  
24 A. I do.  
25 Q. What's that referring to?  
00177:01 A. That's refer -- excuse me -- referring to a  
02 project that I believe was headed by Manohar Furtado,  
03 which they did cell line profiling. They ordered the  
04 cell lines from NCI, National Cancer Institute, and from  
05 ATCC and used the Identifiler kit to profile them, so  
06 they just did an internal project.

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51. PAGE 192:12 TO 193:07 (RUNNING 00:01:41.819)

12 Q. Dr. Ortuno, let me show you what the court  
13 reporter has marked as Exhibit Number 28. It's a  
14 three-page document, Bates stamped Life-0023210 and  
15 going to the last page, which is 23212.  
16 You know what, see if I can get a better  
17 opening here so I can pass you documents. There we go.  
18 Okay. Doctor, did you have a chance to look at  
19 it?  
20 A. Give me just a moment.  
21 Q. Sure.  
22 A. Okay.  
23 Q. Okay. So we're looking at Exhibit 28. And  
24 let's start at the bottom of the first page. Again,  
25 these e-mails are kind of broken up on the pages. Do  
00193:01 you see on the "From" line your name Lisa Ortuno?  
02 A. Yes.  
03 Q. And this next page, which is Bates stamped 11,  
04 is the content of a e-mail that you authored?  
05 A. Yes.  
06 Q. No doubt about it?  
07 A. No.

52. PAGE 194:07 TO 197:24 (RUNNING 00:04:00.792)

07 Q. Okay. And so your subject line is "Potential  
08 Cell Line Authentication Seminar at MD Anderson." Do  
09 you see that?  
10 A. Yes.  
11 Q. But, in fact, if you look at the text here,  
12 that potential presentation is talked about at the  
13 bottom, but the lead-off is that you did a paid online  
14 training for Vivian Gabisi at MD Anderson. So you were  
15 already interacting with them?  
16 A. Oh, yes. I had been for a while.  
17 Q. Okay. So tell me about these paid online  
18 trainings. How do they work?  
19 A. So we offer, for the cost of \$500, to a lab who  
20 wants to -- generally it's used to do software training  
21 online. So they pay for that specific part number, and  
22 then we use the WebEx, or whatever service that we have  
23 at the time, to meet online and we go over software  
24 training.  
25 Q. Okay.  
00195:01 A. And that's what I did for this lab.  
02 Q. So it isn't just like a video that plays?  
03 A. No.  
04 Q. Okay. It's you online interacting?  
05 A. That's correct.  
06 Q. Do you have training materials that you share?  
07 A. We share the GeneMapper program itself.  
08 Q. Okay.  
09 A. There are no presentations generally. It's  
10 just: Here is GeneMapper and here is how you add files  
11 and analyze the data.  
12 Q. Okay.  
13 A. Excuse me.  
14 Q. And I take it Katherine Hale supervised Vivian  
15 Gabisi. Who was the senior person?  
16 A. Katherine is the senior person. There's some  
17 structure there at the MD Anderson that I'm not sure of.  
18 Q. Okay. But was Vivian Gabisi going to be the  
19 hands-on person for analyzing the data?  
20 A. Yes.  
21 Q. Okay. And it says further, as you go down to  
22 this e-mail, that "Vivian is running the cell line

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23 authentication samples...working with the core lab," and  
 24 then there is a parentheses, "(373-48)." What does that  
 25 mean?

00196:01 A. Well, first of all, it's a misspelling. It's  
 02 supposed to say 3730-48, which refers to one of our CE  
 03 instrument models.

04 Q. Okay. Thank you. All right.

05 And then it goes on to say, "She told me that  
 06 all the researchers there using cell lines now have to  
 07 authenticate them, so she is getting more and more  
 08 business." Do you see that?

09 A. Yes.

10 Q. And again, we talked about that earlier as a  
 11 reason why cell line authentication grew a bit?

12 A. Yes.

13 Q. Okay. And then you go on to talk about things  
 14 that are in the need of assistance. Did they get that  
 15 assistance?

16 A. I'm sorry. I'm trying to find -- where is  
 17 that?

18 Q. Sure. After the discussion about "more and  
 19 more business," a sentence on the right starts, "There  
 20 are several aspects of this that" they "are in need of  
 21 assistance."

22 A. Oh, got it. Okay.

23 Q. Okay. Go ahead and take your time to look it  
 24 over.

25 A. Thank you.

00197:01 Okay. Yes. I understand. So often, core  
 02 labs, their primary function is to do sequencing, and  
 03 they're very, very familiar with that.

04 This type of application, which falls under the  
 05 category of fragment analysis, many labs have no  
 06 experience doing. So they don't know how to set up the  
 07 instrument. They don't understand a lot of the details  
 08 needed to get good data. And so that was some of the  
 09 things I was referring to.

10 Q. Okay. And did you, in fact, get an opportunity  
 11 to provide them with this assistance?

12 A. I did.

13 Q. Okay. And how did you do that?

14 A. Over the phone.

15 Q. Okay. And that was subsequent to this e-mail?

16 A. I don't know. I worked with her a lot.

17 Q. Okay. So it would have been numerous phone  
 18 calls?

19 A. Yes.

20 Q. Okay. And over what kind of time period?

21 A. I don't recall.

22 Q. No, I don't mean datewise. Was it weeks,  
 23 months, days?

24 A. Months.

53. PAGE 198:25 TO 199:25 (RUNNING 00:00:56.165)

25 Q. Okay. All right. Now, if we go back to the  
 00199:01 first page of this exhibit, Joe Varlaro is e-mailing you  
 02 and complimenting you, saying, "Great news." Do you see  
 03 that?

04 A. On Page 1?

05 Q. Yes. The first page that's Bates stamped with  
 06 a number ending 10.

07 A. I see where it says, "that's fantastic."

08 Q. Right. Right above it, he says, "Thanks for  
 09 the message, and the great news."

10 A. Yes. I'm sorry. Yes, I see it.

11 Q. Okay. But I'll go with "that's fantastic."

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12 That's even better. So Joe was pretty excited with your  
13 efforts?  
14 A. It looks like it.  
15 Q. Okay. And he's copied about everybody here,  
16 including Michelle Shepherd, your supervisor?  
17 A. He did.  
18 Q. Okay. So everyone was aware of your activities  
19 and your success?  
20 A. Yes, they were.  
21 Q. Were they pleased with you?  
22 A. I think they were.  
23 Q. Okay. And were you pleased with how the job  
24 was going?  
25 A. I was.

**54. PAGE 200:12 TO 200:19 (RUNNING 00:00:23.520)**

12 Q. Now, here in January of 2010, this exhibit  
13 where they're saying "fantastic" and "great news" and  
14 everybody's pleased with you, that seemed to me to  
15 indicate that upper management was in complete support  
16 of your activities?  
17 A. I would say so.  
18 Q. That was your understanding?  
19 A. I would say yes.

**55. PAGE 203:04 TO 204:03 (RUNNING 00:02:08.137)**

04 Q. Dr. Ortuno, I want to show you what the court  
05 reporter has marked as Ortuno Exhibit Number 29. It is  
06 a multi-page document, beginning Life-0006939 to 6943.  
07 A. Okay.  
08 Q. All right. Let's start on the second page of  
09 Exhibit 29, and that's the page Bates stamped 6942. And  
10 mercifully, it looks like just about the whole beginning  
11 of the e-mail is connected with the actual text this  
12 time. Do you see the "From" line, Lisa Ortuno?  
13 A. Yes.  
14 Q. And that's you?  
15 A. That's me.  
16 Q. And this is an e-mail you authored?  
17 A. Yes.  
18 Q. Okay. And the subject line is "SAIC," all  
19 caps, slash, "NCI," all caps, "Cell Line Authentication  
20 Support."  
21 A. Yes.  
22 Q. And do you remember this e-mail?  
23 A. I remember the situation.  
24 Q. Okay. What was the situation?  
25 A. So the National Cancer Institute up at  
00204:01 Fort Detrick had a lab there led by Tim Sheehy, who does  
02 a lot of cell line authentication for the labs up there,  
03 and I was going to do a training for them.

**56. PAGE 204:24 TO 205:09 (RUNNING 00:00:27.980)**

24 Q. Okay. And what caused you to interact with the  
25 folks at SAIC?  
00205:01 A. So they were running this application. There  
02 are several groups at NCI that are doing this.  
03 Q. And that's cell line authentication?  
04 A. Yes.  
05 Q. Okay.  
06 A. Sorry. And this was the first one that I  
07 interacted with, and they needed some training.  
08 Q. And did you give them the training?  
09 A. I did.

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57. PAGE 205:25 TO 206:09 (RUNNING 00:00:24.773)

25 Q. Okay. All right. And what did you teach them  
00206:01 in this training?  
02 A. So in this training, I don't remember every  
03 detail, but typically a training like this would entail  
04 amplifying samples. Actually, they would do that ahead  
05 of time.  
06 Q. Okay.  
07 A. Running them on one of the instruments,  
08 explaining to them the caveats of running on an  
09 instrument, and then looking at the data in GeneMapper.

58. PAGE 208:18 TO 211:17 (RUNNING 00:03:13.591)

18 Q. It says that NCI had genotyping failures, and  
19 it looks like 40 to 60 percent in the past?  
20 A. Yes.  
21 Q. Isn't that a little high?  
22 A. Oh, it's ridiculously high.  
23 Q. What was going on?  
24 A. They made up their own protocol.  
25 Q. Okay. And what would constitute a genotyping  
00209:01 failure?  
02 A. Just not getting an amplified product, perhaps  
03 something being very unbalanced so you don't get a full  
04 profile, those sorts of things.  
05 Q. All right. And if you don't get a full  
06 profile, you can't tell enough about the cell line to  
07 say, "I can say it's authentic"?  
08 A. Oftentimes, yeah.  
09 Q. Okay. Okay. So that's a failure?  
10 A. Uh-huh.  
11 Q. All right. Now, you say, "My understanding of  
12 the protocols that NCI have been using is they are  
13 operating way outside our recommended protocols." And  
14 do you remember communicating that?  
15 A. I do.  
16 Q. And what was the basis of that?  
17 A. I'm pretty sure that -- very, very, like  
18 99 percent sure, they were using reduced reaction  
19 volumes, which is not uncommon for labs using these kits  
20 in a nonforensic way. I'm sure -- that was one big  
21 component of it. And I believe they may have even been  
22 using modified thermal cycling conditions.  
23 Q. Why would they use reduced reaction volumes?  
24 A. To save money.  
25 Q. Okay. All right. Now, it says that Tim wants  
00210:01 to do what it takes to drop this failure rate and put  
02 good quality data together, but there are some  
03 challenges here and you may have to find an acceptable  
04 middle ground. What are you saying there?  
05 A. Let's see.  
06 Q. That's at the end of that big paragraph we've  
07 been looking at.  
08 A. Yes. Okay. I'm sorry. Restate the question.  
09 Q. Sure. It says that the lab is posing some  
10 technical challenges with regard to the validated  
11 protocols, but this guy, Tim, he wants to drop the  
12 failure rate, and so you may have to find some  
13 acceptable middle ground. What did you mean by an  
14 "acceptable middle ground"?  
15 A. Oh, oftentimes that refers to the  
16 quantification step.  
17 Q. Okay.  
18 A. So the validated HID workflow includes the use  
19 of realtime PCR for quantifying DNA. That is a

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20 time-consuming and costly step.  
21 Q. Okay.  
22 A. But it's required for forensics labs.  
23 Q. Got it.  
24 A. Labs outside of forensics don't want to do  
25 that.  
00211:01 Q. Okay.  
02 A. So that would have been part of that.  
03 Q. So the acceptable middle ground then would have  
04 been you're trying to get Tim to do a protocol that's a  
05 little closer to what's validated, but some of the  
06 aspects, like this quantification, might still be left  
07 out, so it's a middle ground --  
08 A. Yeah.  
09 Q. -- it's not an exact validated protocol?  
10 A. That would have been part of the middle ground.  
11 Q. Okay. Did this type of middle ground thing  
12 happen with these types of customers in your experience  
13 over your time at ABI?  
14 A. Yes.  
15 Q. They wouldn't adopt the whole validated  
16 protocol?  
17 A. Correct.

**59. PAGE 213:10 TO 213:13 (RUNNING 00:00:06.893)**

10 Q. Okay. And then it says, "We profiled all  
11 NCI 60 cell line DNA." Was this that internal project  
12 we were talking about?  
13 A. Yes.

**60. PAGE 216:24 TO 219:02 (RUNNING 00:02:47.776)**

24 Q. Okay. Dr. Ortuno, let me show you what's been  
25 marked by the reporter as Ortuno Exhibit Number 30.  
00217:01 It's just a two-page document, Bates stamped  
02 Life-0123782 to 83.  
03 A. Okay.  
04 Q. All righty. Okay. Let's start on the second  
05 page. And this appears to have a complete e-mail  
06 authored by you. Do you see that?  
07 A. Yes.  
08 Q. Lisa Ortuno on the "From" line?  
09 A. Yes.  
10 Q. And you wrote this to a number of people, and  
11 you copied your supervisor, Michelle Shepherd?  
12 A. I did.  
13 Q. Okay. Any question that you authored this  
14 e-mail?  
15 A. No.  
16 Q. Okay. And the subject is "NCI and Cell Line  
17 Authentication." Do you see that?  
18 A. Yes.  
19 Q. Okay. And this talks about the phone call with  
20 this Tim gentleman again and that you had a fruitful  
21 conversation. Do you see that?  
22 A. Yes.  
23 Q. Do you recall this e-mail?  
24 A. Vaguely. Yes.  
25 Q. Do you recall the circumstances leading up to  
00218:01 it?  
02 A. Not exactly. Generally I do, but not exactly.  
03 Q. Okay. It looks like he's talking about a very  
04 large project they're about to undertake with NCI?  
05 A. Yes.  
06 Q. Do you recall the nature of that project?  
07 A. Yes. Generally, I do.

# Promega Corporation v. Life Technologies Corporation

08 Q. And what was that?  
 09 A. So as I mentioned earlier, the way that their  
 10 workflow goes at NCI for doing this cell line  
 11 authentication, they're different labs. So they -- this  
 12 lab was, they explained to me, is called the staging  
 13 lab, and that means a certain part of their workflow.  
 14 And then there was another lab, I think in a distant  
 15 location -- I can't remember where it was -- that was  
 16 also doing some cell line authentication.  
 17 And they interacted with each other, and I  
 18 didn't understand the nature of that interaction, but if  
 19 I recall, there was some talk about pulling more of the  
 20 workflow into their lab, into Tim's lab. And so they  
 21 wanted to do more and more samples at this location, if  
 22 I recall correctly. And let's see here.  
 23 Yeah. So I think that was what was going on at  
 24 this time, I believe.  
 25 Q. And so this was an opportunity to get more  
 00219:01 business?  
 02 A. Yes, it was.

## 61. PAGE 231:02 TO 231:20 (RUNNING 00:01:56.954)

02 Q. Okay. Dr. Ortuno, I want to show you Exhibit  
 03 Number 33, which has been marked Life-0171477 to 81.  
 04 Now, if you can take a look at this, I'll ask you some  
 05 questions about it.  
 06 A. Okay. Okay.  
 07 Q. Okay. So let's start at the second to last  
 08 page, and this ends with a Bates Number -- this has a  
 09 Bates Number ending with the Number 80. And there's --  
 10 for the most part, the whole e-mail is there, to you  
 11 from a person Aviva, A-v-i-v-a, Nestler. Do you see  
 12 that?  
 13 A. Yes.  
 14 Q. November 5, 2010, to you, Ortuno, Lisa?  
 15 A. Yes.  
 16 Q. And the subject line is "cell line  
 17 authentication." Do you recall this e-mail?  
 18 A. Generally, yes.  
 19 Q. Okay. Any question you received it?  
 20 A. No.

## 62. PAGE 233:09 TO 233:20 (RUNNING 00:00:27.674)

09 Q. So we're on now -- I'm going to give the whole  
 10 Bates number, 171479, of Exhibit 33. And unfortunately,  
 11 your e-mail only starts on that page and goes back over,  
 12 but at least we can start there.  
 13 A. Okay.  
 14 Q. Do you see at the bottom there, your e-mail to  
 15 Aviva?  
 16 A. Yes.  
 17 Q. And you authored it?  
 18 A. Yes.  
 19 Q. No doubt about it?  
 20 A. No.

## 63. PAGE 234:24 TO 235:07 (RUNNING 00:00:37.486)

24 Q. Let's finish off your e-mail that is carried  
 25 over now. I'll give you the whole Bates number, 171480.  
 00235:01 That continues, "But our HID sales reps are talking to  
 02 people about it and our support team (mainly me) is  
 03 providing technical support." Is that indicating to  
 04 Aviva that the company is definitely selling for cell  
 05 line -- cell line authentication and you are supporting  
 06 cell line authentication as part of the technical group?

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07 A. Yes.

## 64. PAGE 236:05 TO 237:01 (RUNNING 00:00:33.893)

05 Q. Okay.

06 A. I said, "Please go talk to your friends in  
07 other hospitals that are doing this kind of thing  
08 because they can give you their protocols." That was  
09 common.

10 Q. So would you refer a customer to Korch?

11 A. Yes.

12 Q. Okay. Any others? Would you refer them to any  
13 other people doing this?

14 A. There was an occasion where I was working with  
15 Emory University Hospital.

16 Q. Okay.

17 A. Which is in Atlanta.

18 Q. Right.

19 A. And so is Northside Hospital. So I got those  
20 two together.

21 Q. Okay.

22 A. They were in the same city. "You guys answer  
23 each others' questions."

24 Q. Okay. Now, was that for cell line  
25 authentication or BME?

00237:01 A. I'm sorry. That was for BME.

## 65. PAGE 240:17 TO 241:05 (RUNNING 00:00:41.054)

17 Q. Well, let me take it in pieces. This is  
18 November 8th, 2010. Was what you say here valid a year  
19 prior to this?

20 A. Yes.

21 Q. A year prior to that?

22 A. 2010. 2009. Yes.

23 Q. And a year prior to that?

24 A. 2008, because I was in the forensics group  
25 then, yes.

00241:01 Q. Okay. So at least for a couple of years, this  
02 statement about selling into and supporting the cell  
03 line authentication market, as you've set forth here, is  
04 a valid statement?

05 A. I think so, yes.

## 66. PAGE 244:22 TO 245:01 (RUNNING 00:00:10.589)

22 Q. Okay. So I'll say it another way then. If you  
23 are going to run it under HID, the 3500 has to be  
24 configured one way, and if you're going to run it under  
25 non-HID, the 3500 has to be configured another way?

00245:01 A. Right.

## 67. PAGE 245:17 TO 246:16 (RUNNING 00:00:59.362)

17 Q. Okay. So if I understand you right, they get  
18 the 3500, they get the software that goes for the  
19 nonforensic, if that's what they're going to do, they  
20 might want to do sequencing, which is not an STR-related  
21 thing?

22 A. Correct.

23 Q. But then they might want to run STR kits too?

24 A. Exactly.

25 Q. If they got the training for the sequencing and  
00246:01 now they want to run the STR kits on the machine,  
02 they're going to have to pay for that training?

03 A. That's right.

04 Q. And did you do that kind of training?

05 A. I did.

06 Q. Okay. And it was paid training?

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07 A. In some cases.  
08 Q. Okay. And it would be for teaching them how to  
09 use that 3500 for cell line authentication?  
10 A. It was to -- it was always in the context of  
11 here is the workflow geared towards training to the kit  
12 as a forensics kit.  
13 Q. Okay.  
14 A. All right. And so in cases for nonforensics  
15 labs, if they needed to understand how to do that with a  
16 different configuration, I would help them with that.

**68. PAGE 249:10 TO 250:17 (RUNNING 00:02:10.675)**

10 Q. Okay. All right. Dr. Ortuno, let me show you  
11 what's been marked Exhibit 35. It's a two-page  
12 document, Bates stamped Life-0134344 to 45. And,  
13 Doctor, the first page appears to be a e-mail authored  
14 by you?  
15 A. Yes.  
16 Q. And authored to Dawn?  
17 A. Yes.  
18 Q. And do you recall this communication?  
19 A. You're referring to the one at the very top?  
20 Q. Right.  
21 A. Right. Okay. I don't remember that  
22 specifically.  
23 Q. Any question that it went out from you?  
24 A. No.  
25 Q. Okay. And then the next one down is one from  
00250:01 you to Manohar. We've been talking about Manohar?  
02 A. Yes.  
03 Q. Okay. Let's go to that second paragraph of  
04 that second e-mail on the first page of this exhibit.  
05 You say, "In your phone message you asked about other  
06 applications that use our STR kits. I am not sure  
07 exactly what you are asking for. You are aware of the  
08 chimerism, maternal cell contamination, sample ID  
09 applications, et cetera." My question is: Are those  
10 nonforensic applications that you were supporting during  
11 your time at ABI for use of STR kits?  
12 A. Yes.  
13 Q. Okay. And were there any other nonforensic  
14 applications that you supported while you were at ABI?  
15 A. Using those kits?  
16 Q. Right.  
17 A. I think that was it.

**69. PAGE 255:12 TO 255:14 (RUNNING 00:00:11.669)**

12 Q. Okay. Dr. Ortuno, the court reporter has  
13 marked as Exhibit 38 a three-page document, Bates  
14 stamped Life-0028378 to 80.

**70. PAGE 255:24 TO 256:20 (RUNNING 00:00:59.854)**

24 Q. All right. Let's go to the second page in the  
25 middle. And this appears to be an e-mail from your  
00256:01 supervisor, Michelle Shepherd, to a variety of people,  
02 including you.  
03 A. Yes.  
04 Q. Do you see that?  
05 A. I do.  
06 Q. And it talks about Anna at Northside Hospital.  
07 Do you see that down towards the bottom of the second  
08 page of this exhibit?  
09 A. I do.  
10 Q. And this was Michelle e-mailing you about the  
11 fact that Anna at Northside Hospital in Atlanta uses PP

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12 and CO for BME. What is she saying there?  
13 A. Uses Profiler Plus and Cofiler, two of our STR  
14 kits, for bone marrow engraftment.  
15 Q. Okay. So ABI STR kits?  
16 A. Yes.  
17 Q. For bone marrow engraftment?  
18 A. Correct.  
19 Q. So Michelle knew this?  
20 A. Yes.

**71. PAGE 257:12 TO 257:15 (RUNNING 00:00:13.945)**

12 Q. Okay. So it's fair to say that Michelle  
13 Shepherd knew about specific clients who are using ABI  
14 STR kits for bone marrow engraftment monitoring?  
15 A. Yes.

**72. PAGE 257:18 TO 259:10 (RUNNING 00:02:01.215)**

18 Q. Okay. Dr. Ortuno, the court reporter has  
19 marked as Exhibit 39 a two-page document, Bates stamped  
20 Life-0453342 and 43.  
21 A. All righty.  
22 Q. All right. Okay. On the first page,  
23 mercifully, you've got a whole e-mail intact. Do you  
24 see the "From" line as Lisa Ortuno?  
25 A. I do.  
00258:01 Q. And this is to Robert Rossi?  
02 A. Yes. Yes.  
03 Q. And this is a different Rossi than the Emory  
04 Rossi?  
05 A. It is.  
06 Q. Right. Robert Rossi is part of Life Tech?  
07 A. Yes.  
08 Q. Sales guy?  
09 A. Yes.  
10 Q. Okay. And do you recall drafting this e-mail?  
11 A. Vaguely, yes.  
12 Q. Okay. No question that you drafted it?  
13 A. No.  
14 Q. Okay. And in the body of the e-mail, you point  
15 out that you spoke at length with Stacey DiSanto at  
16 Roswell Park Cancer Center in Buffalo about cell line  
17 profiling for post-transplant monitoring?  
18 A. Yes.  
19 Q. What I want to ask about is: May I understand  
20 that what you mean by "cell line profiling for  
21 post-transplant monitoring" is what today we've been  
22 calling STR kit use for BME?  
23 A. Yes.  
24 Q. Okay.  
25 A. That was unusual wordage there.  
00259:01 Q. Okay. And looks like the Profiler Plus kit was  
02 being used?  
03 A. That's what it looks like.  
04 Q. And do you recall speaking with Stacey DiSanto  
05 at Roswell about this?  
06 A. I remember that I did. I don't remember the  
07 conversation specifically.  
08 Q. Okay. How much did you interact with Stacey or  
09 other people at Roswell?  
10 A. Several times.

**73. PAGE 260:15 TO 262:06 (RUNNING 00:02:13.899)**

15 Q. And the employer is Roswell Park. Do you see  
16 that? It's about two-thirds of the way down from the  
17 top.

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18 A. Yes.  
19 Q. Okay. And there is a summary in the middle  
20 under a reference number, "Possible Inhibitor in DNA."  
21 Do you see that?  
22 A. I do.  
23 Q. Okay. Do you recall a circumstance where  
24 Stacey conveyed a problem with a possible inhibitor?  
25 A. That's quite possible.  
00261:01 Q. Okay. Looking at the last page, just take a  
02 quick look at that and see if that jogs your memory.  
03 A. Okay. Okay.  
04 Q. All right. And then if you go to the first  
05 page, some kind of curious things appear. In the middle  
06 of the page, Michelle Shepherd writes an e-mail on -- on  
07 Monday, the 22nd, at 11:15 a.m., and she sends it off to  
08 the technical support group and Ellen Bishop, and she  
09 says, "Shall we pass this one to Lisa O? Or someone  
10 else?" Do you see that?  
11 A. I do.  
12 Q. Then if you go to the e-mail above that, Ellen  
13 writes back to Michelle, "Lisa O. is aware of it. I  
14 think she has been waiting to respond due to the recent  
15 uncertainty of our role in these types of applications."  
16 And you're copied on that?  
17 A. Yes.  
18 Q. Do you have any idea what they're talking  
19 about?  
20 A. With what's being passed or with --  
21 Q. "The recent uncertainty of our role."  
22 A. Yes, I do.  
23 Q. And what's that?  
24 A. There had been raised the question as to  
25 whether or not we should be -- we should be promoting  
00262:01 these kits in nonforensic environments.  
02 Q. And that had come up recently?  
03 A. I don't know exactly the date was when that had  
04 come up.  
05 Q. 2010 early, some part of 2000- --  
06 A. It was before 2010.

**74. PAGE 264:08 TO 265:22 (RUNNING 00:02:26.243)**

08 Q. All right. Dr. Ortuno, the court reporter has  
09 marked as Exhibit 42 a four-page document, Bates stamped  
10 Life-0142343 and the last page ends with the numbers  
11 346.  
12 A. Okay.  
13 Q. Okay. Let's start on the second page, and in  
14 the top third of that page, kind of towards the middle  
15 is an e-mail from you. Do you see that?  
16 A. Yes.  
17 Q. And that's to Michelle?  
18 A. Yes.  
19 Q. And also to Jose Arboleda?  
20 A. Correct.  
21 Q. A-r-b-o-l-e-d-a. Who is Jose?  
22 A. He's a service engineer who does instrument  
23 installs and repairs.  
24 Q. Okay. And you authored this e-mail?  
25 A. I did.  
00265:01 Q. No doubt about it?  
02 A. No.  
03 Q. Do you recall it?  
04 A. Basically.  
05 Q. Okay. And you contacted Jose and asked him  
06 when he's going to do the install. Do you see that?  
07 A. Correct.

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08 Q. Was it your practice for you to interact with  
09 the field service engineers where a piece of equipment  
10 was going to be installed where you were going to be  
11 responsible for training?  
12 A. Yes.  
13 Q. And why is that?  
14 A. So you can organize the timeline for training  
15 with the customer.  
16 Q. Okay. And depending on the use, would the  
17 training -- would you dovetail the training to the  
18 particular use?  
19 A. Yes.  
20 Q. Okay. And did you do that in the case of Stony  
21 Brook?  
22 A. I did.

## 75. PAGE 265:25 TO 266:20 (RUNNING 00:01:34.515)

25 Q. Okay. Dr. Ortuno, the court reporter has  
00266:01 marked as Exhibit 43 a two-page document, Bates stamped  
02 Life-0022961 to 22962. If you can just look that over.  
03 A. Okay.  
04 Q. On the front page, there appears to be an  
05 e-mail authored by you to a K-e-o Sullivan.  
06 A. Ken O. Sullivan. Yes.  
07 Q. Okay. And who is Ken Sullivan?  
08 A. He was -- I believe he was in a either director  
09 or lab manager type position at Stony Brook.  
10 Q. Okay. And is this a contact to Ken in advance  
11 of the install?  
12 A. Or -- definitely in advance of the training.  
13 Q. Okay.  
14 A. I'm not sure about the install. Let me see. I  
15 have to read it. Instrument will be installed. So yes,  
16 it would have been.  
17 Q. Okay. Is it fair to say this is a case where  
18 ABI knew of the use of the instrument before the  
19 instrument was installed?  
20 A. Yes.

## 76. PAGE 267:22 TO 268:17 (RUNNING 00:01:30.274)

22 Q. Dr. Ortuno, the court reporter has marked as  
23 Exhibit 44 a four-page document, beginning with  
24 Life-0022965 and going to 22969. If you could have a  
25 look at that.  
00268:01 A. Okay.  
02 Q. Okay. Let's start with the second page, which  
03 is Bates stamped 22966. There is an e-mail from you  
04 there to, again, Jose Arboleda. Do you see that?  
05 A. Yes.  
06 Q. Starts, "Hola Jose, Muchas gracias." Do you  
07 see that?  
08 A. Yes.  
09 Q. Do you recall this e-mail?  
10 A. Generally, yes.  
11 Q. Did -- were you pretty familiar with Jose?  
12 A. Yeah, I knew him pretty well.  
13 Q. Okay. You had interacted with him on other  
14 installs?  
15 A. On a few, yes.  
16 Q. Okay. And any question you wrote this e-mail?  
17 A. No.

## 77. PAGE 269:16 TO 270:04 (RUNNING 00:00:36.309)

16 Q. Okay. Was it your habit to tell Jose the  
17 particular configuration for a particular install in a

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18 particular case?

19 A. It was habit for you or someone doing a  
20 training to communicate with the engineer to make sure  
21 that you are on the same page with that.

22 Q. Okay.

23 A. So in this case, because of some of the  
24 complexities I mentioned to you about the 3500  
25 specifically, and this is probably the first 3500 I had  
00270:01 worked with, we were really overcommunicating on that --

02 Q. Okay.

03 A. -- to make sure everybody knew exactly what was  
04 going on.

**78. PAGE 278:17 TO 279:02 (RUNNING 00:01:00.571)**

17 Q. Okay. Doctor, the court reporter has marked as  
18 Exhibit Number 48 a two-page document, Bates stamped  
19 Life-0455838 to 839.

20 A. Okay.

21 Q. On the first page, it appears to be an e-mail  
22 that you authored to a Samantha Allen. Do you see that?

23 A. I do.

24 Q. Do you recall this e-mail?

25 A. I recall generally speaking with her.

00279:01 Q. Okay. Any question that you authored this?

02 A. No.

**79. PAGE 280:04 TO 281:08 (RUNNING 00:01:36.641)**

04 Q. So I took it that you've got a new lab at Stony  
05 Brook doing chimerism, you've got an existing customer  
06 who is doing something similar, and you thought it would  
07 be good for them to interact?

08 A. Yes. That was probably what I was thinking.

09 Q. Okay. So this would be somewhat similar to the  
10 Northside/Emory situation in Atlanta where you  
11 introduced two chimerism customers together?

12 A. Right.

13 Q. Okay. And again, this was to help them help,  
14 for example, a new chimerism lab like Stony Brook to get  
15 answers to specific technical questions?

16 A. To -- well, possibly. When I did the training  
17 for Stony Brook, Larry Usher, who was the lead  
18 technician in that lab, actually did not attend the  
19 training. It was attended by three lower-level  
20 technicians who were struggling quite a bit. And there  
21 were conversations about additional help and other  
22 resources.

23 Q. Okay. But coming back now to just what Sam  
24 would do if she talked to the people at Stony Brook, was  
25 the idea here that Sam would be able to answer some of  
00281:01 their questions at Stony Brook?

02 A. Generally. The idea was that the two different  
03 labs have similar workflow or they have similar things  
04 that they are doing. They're doing the same kind of  
05 work, so they have the same issues. So if you get them  
06 together, then they can work on those together.

07 Q. And that might help one or both of them out?

08 A. Correct.

**80. PAGE 329:20 TO 330:13 (RUNNING 00:01:00.148)**

20 Q. Did Michelle Shepherd ever instruct you to  
21 provide support for nonforensic customers by giving them  
22 information outside the validated protocol?

23 A. It was made clear to me that my role as a  
24 non-HID point person, I was to support them as best as I  
25 could -- as best as I could.

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00330:01 Q. And did you receive any -- ever receive any  
02 specific instructions from Michelle or from anyone else  
03 within that business unit as to specifically how you  
04 were to do that?  
05 A. That's exactly what I asked for clarification  
06 on. And they would just insist that to always try to  
07 get them to run the validated protocol, but then she  
08 would say -- and I was commended in my reviews  
09 repeatedly, which exist in the databases, for my support  
10 of these customers in helping them to get online, which  
11 they knew meant running things like POP6 and GeneMapper  
12 4.0 and providing the files that they needed to analyze  
13 the data.

**81. PAGE 330:14 TO 330:19 (RUNNING 00:00:18.658)**

14 Q. Do you recall any specific instructions, again,  
15 either from Michelle or any of her superiors, with  
16 respect to specifically how you were to support  
17 nonforensic customers outside of the protocol?  
18 A. When you say "specific," I guess I would have  
19 to say no.

**82. PAGE 338:18 TO 338:23 (RUNNING 00:00:17.115)**

18 Q. Do you know what percentage -- and I'm talking  
19 now about the '07 time period forward. Do you know what  
20 percentage of Applied Biosystems STR kits were sold for  
21 forensic uses as opposed to nonforensic uses?  
22 A. The overwhelming majority was used for forensic  
23 uses.

**83. PAGE 340:02 TO 340:09 (RUNNING 00:00:15.707)**

02 Q. But if the kit was being purchased online, then  
03 would it be correct that there wouldn't be a sales rep  
04 that would know that?  
05 A. Yeah. They may not necessarily know. Yeah.  
06 They wouldn't know of a online purchase.  
07 Q. And wouldn't know what the -- what the online  
08 purchaser was using the kit for?  
09 A. No, not necessarily.

**84. PAGE 340:10 TO 341:01 (RUNNING 00:00:49.169)**

10 Q. Did you ever -- have you ever had a reason or  
11 an occasion to conduct any sort of market studies  
12 regarding the various types of use of Applied Biosystems  
13 STR kits?  
14 A. No. That's not in the scope of my job  
15 description.  
16 Q. And would you have had access to or would you  
17 have viewed that information while you were employed at  
18 Applied Biosystems?  
19 A. I received a document with a list of users of  
20 HID kits, I believe it was from Guido Sandulli, listing  
21 all the people that had purchased STR kits specifically  
22 for nonforensic use.  
23 Q. For what purpose did you receive that document?  
24 Do you know?  
25 A. I think he was trying to ascertain how much  
00341:01 money they bring in.

**85. PAGE 341:02 TO 341:17 (RUNNING 00:00:54.812)**

02 Q. Do you have any basis to know -- again, looking  
03 at nonforensic segments of the market, do you have any  
04 basis to know how large those segments are or if they  
05 would be growing or not?

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06 A. It's -- an extremely small percentage of our  
07 revenue comes from those. It was growing. I can tell  
08 you I was getting more and more calls about it in the  
09 past two years. But still, it was a case where they  
10 took up a lot of time, but they don't buy a whole lot.  
11 They may buy a couple of kits a year. Very low volume.

12 Q. And would that be true for all nontraditional  
13 users?

14 A. The bone marrow engraftment labs probably would  
15 comprise the highest sales, but still, even they were  
16 very, very small amount of revenue. I mean, oftentimes  
17 the HID reps wouldn't even worry with it.

86. PAGE 347:13 TO 347:15 (RUNNING 00:00:09.622)

13 Q. In fact, didn't we see today that Ms. Shepherd  
14 didn't just sit back, she actually participated  
15 sometimes in the training of nonforensic customers?

87. PAGE 347:17 TO 347:17 (RUNNING 00:00:00.729)

17 THE WITNESS: Yes.

88. PAGE 348:18 TO 348:22 (RUNNING 00:00:15.431)

18 Q. Oh, okay. Yeah. No. No. In other words,  
19 this wasn't some company policy that you were aware of  
20 that you couldn't support outside of the validated  
21 protocol?

22 A. No.

89. PAGE 351:05 TO 351:11 (RUNNING 00:00:14.535)

05 Would you characterize yourself as being a very  
06 customer support oriented person?


07 A. Yes.

08 Q. Wanted to do whatever you could to support the  
09 customer?


10 A. Yes, but not to the extent that I don't do what  
11 the company wants me to do.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:45:49.703)

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 Rossi, Robert (Vol. 01) - 11/22/2011

1 CLIP (RUNNING 01:00:45.684)

 QC020412

ROSSDES

50 SEGMENTS (RUNNING 01:00:45.684)



1. PAGE 6:03 TO 7:17 (RUNNING 00:01:01.410)

03 This is the videotape  
04 deposition of Robert Rossi, taken by  
05 the Plaintiff, in the matter of  
06 Promega Corporation, et al. versus  
07 Life Technologies Corporation, et  
08 al., United States District Court,  
09 Western District of Wisconsin, Case  
10 No. 10-CV-281, held at the conference  
11 rooms of the Hanover Marriott,  
12 located in Whippany, New Jersey, on  
13 Tuesday, November 22nd, 2011, at  
14 9:20 a.m.

15 I am Max Stein, the  
16 videographer. The court reporter is  
17 Kathy McHugh. We are from the firm  
18 of Amicus Court Reporting,  
19 Incorporated, in Chicago, Illinois.  
20 Counsel will now introduce  
21 themselves.

22 MR. CARROLL: Pete Carroll  
23 representing Promega.

24 MR. MCCARTHY: Michael  
00007:01 McCarthy representing Defendant Life  
02 Technologies.

03 VIDEO OPERATOR: The court  
04 reporter will now swear in the  
05 witness.

06 ROBERT ROSSI, having been  
07 duly sworn, was examined and  
08 testified as follows:

09 EXAMINATION

10 BY MR. CARROLL:

11 Q. Good morning.

12 A. Good morning.

13 Q. Can you give me your full  
14 name for the record.

15 A. Robert Rossi.

16 Q. And your residence?

17 A. Sparta, New Jersey.

2. PAGE 9:04 TO 12:11 (RUNNING 00:02:26.032)

04 Q. Okay. Little bit of  
05 background.

06 Let's start with college.  
07 What was your degree?

08 A. I have a Bachelor's in  
09 biology from what used to be North  
10 Adams State College, which is now  
11 Massachusetts College of Liberal  
12 Arts.

13 Q. Okay. Way out in Western  
14 Mass.

15 A. Yes.

16 Q. I've been out there.

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17 And what year was that?  
18 A. That was 1984.  
19 Q. Okay. And any graduate  
20 school?  
21 A. No.  
22 Q. And where did you go after  
23 college?  
24 A. I had taken a position with  
00010:01 a company called Yankee Oxygen at the  
02 time, and that was a sales position  
03 in the Boston area.  
04 Q. Okay. How long did you  
05 stay with them?  
06 A. One year.  
07 Q. All right. And then where  
08 did you go?  
09 A. From there, I went to a  
10 company called Sarstedt.  
11 Q. And what's Sarstedt?  
12 A. They are a company that was  
13 involved in manufacturing consumables  
14 for the life sciences market.  
15 Q. Okay. Another sales  
16 position?  
17 A. Yes.  
18 Q. All right. And how long  
19 did you stay with them?  
20 A. Over three years.  
21 Q. And then where did you go?  
22 A. Then I went to a company  
23 called Dawson Company, and I had a  
24 sales role with them as well.  
00011:01 Q. Okay. How many years with  
02 them?  
03 A. Three years.  
04 Q. Okay. And then where?  
05 A. And then to Becton-  
06 Dickinson.  
07 Q. Okay. What did you do  
08 there?  
09 A. I was in sales, as well as  
10 sales training, and that was also in  
11 the Boston area.  
12 Q. Okay. And if you can give  
13 me a roundabout date for Becton-  
14 Dickinson.  
15 A. I was there roughly six  
16 years.  
17 Q. Okay. From when to when,  
18 roughly?  
19 A. Let's see. Let's back up.  
20 '98 is when I started with Applied  
21 Biosystems, so it must have been '92,  
22 '93 time frame.  
23 Q. Okay. Now, let's just take  
24 that time frame you just mentioned,  
00012:01 '92, '93 to '98.  
02 During that period or prior  
03 to that, had you learned about  
04 amplification of DNA?  
05 A. No, I have not.  
06 Q. Okay. So then you joined  
07 Applied Biosystems in 1998?  
08 A. Yes.  
09 Q. And what's your position  
10 there?

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11 A. Sales representative.

**3. PAGE 12:12 TO 13:19 (RUNNING 00:01:00.441)**

12 Q. Okay. And what did you do  
13 in 1998? What kind of sales? What  
14 kind of products?

15 A. At that time, it was  
16 primarily realtime PCR technology.

17 Q. Okay. And if you hadn't  
18 had any PCR prior to that, how did  
19 you pick that up?

20 A. Through training from -- at  
21 the time, it was PE Biosystems.

22 Q. Oh, okay. And did they  
23 have some kind of formal training for  
24 new people?

00013:01 A. Yes.

02 Q. Oh, and what did that  
03 entail?

04 A. That was, more or less,  
05 training in the basics, initially  
06 starting with PCR, in terms of some  
07 of the history, as well as the  
08 methodology of PCR.

09 And then from there, there  
10 was some additional training in  
11 realtime PCR, more or less theory, as  
12 well as fundamentals and chemistry.

13 Q. Okay. Did you get a chance  
14 to actually perform PCR?

15 A. No.

16 Q. Okay. And just for the  
17 record, PCR is the polymerase chain  
18 reaction?

19 A. Yes.

**4. PAGE 14:16 TO 18:17 (RUNNING 00:03:04.257)**

16 Q. All right. Great.

17 So the first position at  
18 ABI in 1998 was a sales position  
19 involving realtime PCR. How long did  
20 you stay in that position?

21 A. That was roughly three  
22 years.

23 Q. Okay. And what caused you  
24 to change that position?

00015:01 A. Within Applied Biosystems,  
02 there was another opportunity as a  
03 sales representative and that was  
04 more along the lines of automated  
05 cell culture technology, as well as  
06 cell-based assays that we had a new  
07 platform that we were promoting.

08 Q. Okay. And approximately  
09 when was that?

10 A. That was -- must have been  
11 19 -- or just right around 2000 was  
12 the first year that I started in that  
13 role.

14 Q. Now, let's talk about those  
15 two roles. The one in '98 and then  
16 the one in 2000 or so.

17 Those were both sales  
18 positions, but did they involve going  
19 out on the road and meeting with

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20 potential customers or was it some  
21 kind of other sales position?  
22 A. No. It would be with  
23 meeting with customers, potential  
24 customers, to utilize that  
00016:01 technology.  
02 Q. Okay. And in this second  
03 position now with the, I think you  
04 said, cell culture, did I hear that  
05 right?  
06 A. Yes. Cell culture  
07 automated assays.  
08 Q. Okay. Now, did you get  
09 some training for that?  
10 A. That was more on-the-job  
11 types of training, but there wasn't  
12 formal training, per se.  
13 Q. Okay. And then how long  
14 did you keep that position?  
15 A. Five years.  
16 Q. Okay. And then what did  
17 you do?  
18 A. And then I came back into  
19 more of the core business, still as a  
20 sales representative, and that was  
21 more, again, in realtime PCR, as well  
22 as PCR, and that was primarily in the  
23 New York, New Jersey area.  
24 Q. Okay. Again, a sales  
00017:01 position?  
02 A. Yes.  
03 Q. Okay. And how long did you  
04 have that position?  
05 A. Three years.  
06 Q. All right. And then that  
07 brings us up to 2008, somewhere  
08 around there?  
09 A. Yes.  
10 Q. And then what did you do?  
11 A. And then it was more of a  
12 hybrid role, I believe is what they  
13 called it, more as a strategic  
14 account manager.  
15 Q. Okay.  
16 A. So I covered primarily  
17 pharmaceutical and biotech accounts  
18 and it was still, more or less,  
19 selling the realtime PCR technology.  
20 Q. Okay. That was 2008?  
21 A. Yes.  
22 Q. Okay. Has that stayed the  
23 same or have things changed?  
24 A. Now, in this current role,  
00018:01 I am more as -- still as a sales  
02 representative, but more on the human  
03 identification forensics marketplace.  
04 Q. Okay. And when  
05 approximately did that happen?  
06 A. That happened in 2010.  
07 Q. Okay. And what caused you  
08 to take that position, if anything?  
09 A. Just, more or less, an  
10 interest in the market.  
11 Q. Okay.  
12 A. And an opening within that  
13 area.

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14 Q. Okay. And so now the  
15 product in this new position -- and  
16 it's your current position?  
17 A. Yes.

5. PAGE 40:05 TO 44:21 (RUNNING 00:03:55.851)

05 Q. Okay. And my question is,  
06 since January of 2010, have you had  
07 occasion to find somebody new, a new  
08 entity, who previously was not buying  
09 ABI STR kits, but through your sales  
10 activity now buys ABI STR kits?  
11 A. Yes.  
12 Q. Okay. And who is that?  
13 A. That would be Dartmouth  
14 Medical College or Mary Hitchcock  
15 Medical Center.  
16 Q. All right. So I've seen  
17 that name in a variety of formats.  
18 I've seen Dartmouth-  
19 Hitchcock Medical Center. Is that  
20 one of the names for that institution  
21 you're talking about?  
22 A. Yes.  
23 Q. Okay. And what do they do?  
24 A. At that facility they do --  
00041:01 well, I guess, could you be a little  
02 bit more specific in terms of the --  
03 because there are several customers  
04 there that also do a number of --  
05 Q. Okay. So let's talk  
06 with -- about your initial sales  
07 approach to -- I'll call it  
08 Dartmouth-Hitchcock Medical Center.  
09 Is that okay?  
10 A. Yes.  
11 Q. Your initial sales  
12 approach, who did you -- who did you  
13 contact there?  
14 A. Well, that was through one  
15 of my colleagues that I work with at  
16 Applied Biosystems.  
17 Q. Who was that?  
18 A. That was Aviva Nestler.  
19 Q. Okay. And what does Aviva  
20 Nestler do?  
21 A. She's my counterpart, but  
22 she primarily sells the genetic  
23 analyzers to the pharmaceutical, the  
24 research, the academic types of  
00042:01 accounts.  
02 Q. Okay. Does she also  
03 involve herself in selling HLA kits?  
04 A. HLA kits?  
05 Q. Yes.  
06 A. No.  
07 Q. Okay. So Aviva introduced  
08 you to this Dartmouth-Hitchcock  
09 Medical Center?  
10 A. Yes.  
11 Q. And how did that happen?  
12 A. Aviva had sold some  
13 instrumentation to the laboratory for  
14 doing a couple of tests for, I  
15 believe it was -- and I'm not 100  
16 percent certain, but I believe it was

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17 a test called KRAS.  
18 Q. Okay. And what kind of lab  
19 was this?  
20 A. That was a clinical  
21 laboratory.  
22 Q. Okay. And what did the  
23 clinical laboratory do?  
24 A. General types of work that  
00043:01 you'd find in a traditional clinical  
02 lab setting.  
03 Q. Okay.  
04 A. So they did various types  
05 of hematological-type work, as well  
06 as some genetic work as well in this  
07 particular case.  
08 Q. Any transplant work?  
09 A. They -- I believe that they  
10 were just beginning to do some of  
11 that.  
12 Q. Okay. And then Aviva  
13 introduced you to somebody there?  
14 A. Yes.  
15 Q. And who was that?  
16 A. I believe it was Samantha.  
17 Q. Samantha Allen?  
18 A. Yes.  
19 Q. Okay. And did you actually  
20 physically meet with her?  
21 A. Yes.  
22 Q. And where is that?  
23 Lebanon, New Hampshire, I think.  
24 A. That's right.  
00044:01 Q. Okay. So you went up to  
02 Lebanon, New Hampshire and met with  
03 Samantha Allen?  
04 A. Yes.  
05 Q. Was Aviva there at the  
06 meeting?  
07 A. Yes.  
08 Q. Okay. And what happened at  
09 that meeting?  
10 A. Aviva had introduced me to  
11 the folks in the laboratory, and it  
12 was my understanding that they were  
13 looking to do some testing in  
14 addition to the KRAS types of tests  
15 that they had originally purchased  
16 the equipment for.  
17 They were also looking to  
18 do some additional testing on the  
19 instrument. And I believe it was the  
20 engraftment type of work that they  
21 were looking to do.

**6. PAGE 45:09 TO 46:11 (RUNNING 00:00:55.748)**

09 Just so we get our hands  
10 around engraftment, because, again,  
11 there's a lot of terminology there.  
12 I'm aware, for example, with bone  
13 marrow engraftment that they refer to  
14 engraftment where they transplant  
15 bone marrow and then they see whether  
16 it takes in the recipient and they  
17 call that engraftment.  
18 Is that your understanding,  
19 too?

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20 A. Basically, yes.  
21 Q. Okay. And so was it your  
22 understanding that Samantha Allen was  
23 interested in using ABI STR kits to  
24 monitor bone marrow engraftment?  
00046:01 A. I -- I believe monitor  
02 might be the correct term, but I  
03 can't be 100 percent certain.  
04 Q. Okay. And so what did you,  
05 if anything, tell Samantha Allen  
06 about ABI STR kits?  
07 A. I just, more or less,  
08 informed her on what we had  
09 available --  
10 Q. Okay.  
11 A. -- for that.

**7. PAGE 48:08 TO 49:05 (RUNNING 00:00:46.560)**

08 I'll start with Samantha  
09 Allen. Did she buy ABI STR kits?  
10 A. I believe she did.  
11 Q. Okay. She ordered them up?  
12 A. I believe so.  
13 Q. Okay. And do you know what  
14 machine she used them on, what  
15 instrument?  
16 A. I believe it was the same  
17 instrument that Aviva had sold to  
18 her.  
19 Q. And that was a...?  
20 A. That was the 3500 Genetic  
21 Analyzer.  
22 Q. Okay. So that was a newer  
23 machine in the summer of 2010?  
24 A. Yes.  
00049:01 Q. Okay. And do you know if  
02 that laboratory is today purchasing  
03 ABI STR kits to monitor bone marrow  
04 engraftment?  
05 A. I believe that they do.

**8. PAGE 52:22 TO 53:08 (RUNNING 00:00:28.285)**

22 Q. Okay. Any nonforensic  
23 entities of that type that you  
24 developed on your own, through your  
00053:01 own sales activities, since January  
02 of 2010?  
03 A. I believe it would be --  
04 that would purchase product, I  
05 believe it would be Dartmouth and the  
06 Stony Brook, would really be the two  
07 that come to mind that I would call  
08 customers.

**9. PAGE 60:10 TO 63:16 (RUNNING 00:04:48.479)**

10 Q. Mr. Rossi, the court  
11 reporter has marked as Exhibit 5 a  
12 multipage document, Bates stamped  
13 Life-0001748 to 1761.  
14 If you'd take a second to  
15 look at that, I'll ask you some  
16 questions.  
17 A. (Witness reviews document.)  
18 Okay.  
19 Q. Have you seen this document

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20 before?  
21 A. Yes.  
22 Q. And on what occasion?  
23 A. I would have to believe it  
24 was during the time when we had our  
00061:01 forecast reporting.  
02 Q. Okay. And Dave Oehler was  
03 preparing those?  
04 A. I don't know if he directly  
05 prepared these or if they were  
06 prepared for him.  
07 Q. Okay. But, from time to  
08 time, you would see these types of  
09 forecasts?  
10 A. Periodically.  
11 Q. Okay. And I notice that  
12 the salespeople along the top are the  
13 salespeople we saw before in the  
14 organizational chart of Exhibit 2.  
15 A. Yes.  
16 Q. Okay. So, I take it, this  
17 was in the 2010 period when you were  
18 still reporting to Dave Oehler?  
19 A. Yes.  
20 Q. Okay. And staying with the  
21 first page, which is Bates stamped  
22 1748, the third column from the far  
23 right, there's Rossi.  
24 Do you see that?  
00062:01 A. Yes.  
02 Q. And that's you?  
03 A. Yes.  
04 Q. Okay. And what is being  
05 represented in the two boxes where  
06 you have your name on the upper box,  
07 which appears to say, on the far  
08 left -- sorry -- Q2 forecast. And  
09 then down in the second box, it says,  
10 Q2 upside.  
11 What's being communicated  
12 there, if you know?  
13 A. Forecast would be what's  
14 projected for that quarter.  
15 Q. Okay.  
16 A. Upside would be defined as  
17 what is in the funnel, to use a sales  
18 term --  
19 Q. Okay.  
20 A. -- but not necessarily  
21 forecasted.  
22 Q. Okay. So help me  
23 understand that phrase "in the  
24 funnel." Is that something that's  
00063:01 further out on the horizon or more  
02 sure, a sure bet?  
03 A. It's -- it's an ambiguous  
04 term. It could cover that area.  
05 Q. Okay.  
06 A. You could -- because things  
07 could potentially change, of course.  
08 Q. All right. Okay. Now, it  
09 looks in the upper box -- and, again,  
10 I'm just looking at your box, Rossi,  
11 if I line that up right, and I can  
12 read this small print, it looks like  
13 80,000 in revenue is forecast for CE

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14 instruments, parentheses, HID, close  
15 parentheses; is that right?  
16 A. Yes.

**10. PAGE 64:03 TO 65:05 (RUNNING 00:00:59.427)**

03 Is this forecasting an  
04 \$80,000 instrument that you think you  
05 may sell to a customer for running  
06 ABI STR kits?  
07 A. It potentially could be for  
08 additional applications as well.  
09 Q. Okay. But I saw that  
10 parentheses, HID, so I assumed, at  
11 least, ABI STR kits was involved,  
12 right?  
13 A. Yes.  
14 Q. Okay. And the CE stands  
15 for capillary electrophoresis?  
16 A. Yes.  
17 Q. Okay. And help me out. At  
18 this time, assuming this is 2010,  
19 what instrument would run around  
20 \$80,000 that could run ABI STR kits?  
21 A. It could be a couple of  
22 different instruments.  
23 Q. Okay. 3130?  
24 A. Yes.  
00065:01 Q. That's in that price range,  
02 around?  
03 A. Yes.  
04 Q. Okay. For a single  
05 instrument?

**11. PAGE 76:14 TO 77:04 (RUNNING 00:02:54.213)**

14 Q. Mr. Rossi, the court  
15 reporter has marked as Exhibit 6 a  
16 multipage document, Bates stamped  
17 Life-0249533 and going to 560.  
18 Can you take a look at that  
19 and I can ask you a question or two  
20 about it.  
21 A. (Witness reviews document.)  
22 Okay.  
23 Q. Have you had occasion to  
24 see this document before?  
00077:01 A. Yes.  
02 Q. And on what occasion?  
03 A. I believe monthly, at a  
04 minimum.

**12. PAGE 78:19 TO 80:02 (RUNNING 00:01:27.687)**

19 Q. Okay. So, on this first  
20 page, which is Bates stamped 249533,  
21 it looks like looking down from --  
22 actually, let's go from the bottom  
23 up. Going up one line from the Grand  
24 Total line, it says, Robert Rossi.  
00079:01 Do you see that?  
02 A. Yes.  
03 Q. So these are sales specific  
04 to you?  
05 A. Yes.  
06 Q. Okay. So these are sales  
07 numbers for the entities within your  
08 region?

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09 A. Yes.  
10 Q. Okay. And with respect to  
11 that, let's go three pages in to the  
12 page that's Bates stamped 249535.  
13 Do you see that?  
14 A. Yes.  
15 Q. Okay. And was this part of  
16 the report familiar to you, too?  
17 A. Yes.  
18 Q. So this was more of the  
19 details of the sales, whereas, the  
20 front page is the summary?  
21 A. Yes.  
22 Q. Okay. And are the entities  
23 listed on what's been Bates stamped  
24 249535 entities you're responsible  
00080:01 for in your territory?  
02 A. Yes.

**13. PAGE 80:22 TO 81:02 (RUNNING 00:00:08.377)**

22 Q. Okay. And then the next  
23 entry is Esoterix Genetic  
24 Laboratories.  
00081:01 Do you see that?  
02 A. Yes.

**14. PAGE 82:03 TO 82:19 (RUNNING 00:00:45.090)**

03 Q. Okay. Do they use ABI STR  
04 kits?  
05 A. Yes.  
06 Q. And do they use it for  
07 maternal cell contamination testing?  
08 A. I believe so.  
09 Q. Okay. And what is maternal  
10 cell contamination, if you know?  
11 A. My understanding, and I'm a  
12 salesperson, not a technical person,  
13 per se, but my understanding is, it  
14 is a method that they utilize to  
15 determine if there is any of the  
16 mother's blood that is coming into  
17 contact with the fetus, and it's,  
18 more or less, a quality control type  
19 of a test that's done.

**15. PAGE 84:05 TO 86:08 (RUNNING 00:01:50.624)**

05 Q. Okay. And before the  
06 break, you had mentioned that they  
07 use ABI STR kits for maternal cell  
08 contamination?  
09 A. Yes.  
10 Q. And you had mentioned you  
11 had visited the lab. When was the  
12 last time you visited them?  
13 A. I believe it would have  
14 been several months ago.  
15 Q. Okay. But this year?  
16 A. It actually could have been  
17 in 2010. It could have even been  
18 further back.  
19 Q. Okay. And did you have  
20 occasion to meet the people in the  
21 lab?  
22 A. Generally, it would just be  
23 one individual that I would meet

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24 with.  
00085:01 Q. And who would that be?  
02 A. That would be Sue  
03 Countryman.  
04 Q. Okay. That's your primary  
05 contact?  
06 A. Yes.  
07 Q. Okay. And you had occasion  
08 to interact personally when you  
09 visited?  
10 A. Yes.  
11 Q. And is it -- do you keep in  
12 contact with her electronically when  
13 you're not visiting?  
14 A. Yes.  
15 Q. And when she wants more ABI  
16 STR kits for maternal cell  
17 contamination testing, does she  
18 e-mail you and tell you that?  
19 A. Yes.  
20 Q. Okay. And then do you  
21 arrange to have the kits shipped out?  
22 A. I'm a link in the process,  
23 yes.  
24 Q. Okay. And, according to  
00086:01 this, the sales involved \$61,787 in  
02 2010.  
03 A. Yes.  
04 Q. Does that comport with your  
05 recollection about the size of their  
06 business with respect to buying ABI  
07 STR kits?  
08 A. I believe so, yes.

**16. PAGE 87:14 TO 89:06 (RUNNING 00:01:04.238)**

14 Q. Okay. And then there's the  
15 Hackensack University Medical Center.  
16 Do you see that?  
17 A. Yes.  
18 Q. Have you visited them?  
19 A. Yes.  
20 Q. And when was that,  
21 approximately? This year? Last  
22 year?  
23 A. That would be this year.  
24 Q. This year. Okay.  
00088:01 And do you have a primary  
02 contact there, too?  
03 A. Yes.  
04 Q. And who is that?  
05 A. Dr. Tao Hong.  
06 Q. Okay. And is he the head  
07 of the lab?  
08 A. I don't know if he's the  
09 head of the laboratory, but he's --  
10 he's my primary contact.  
11 Q. Okay. And what does his  
12 lab do?  
13 A. They are -- they're a  
14 clinical pathology laboratory.  
15 Q. Okay.  
16 A. So they do a number of  
17 classical clinical types of testing.  
18 Q. Okay. And do they use ABI  
19 STR kits?  
20 A. Yes.

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21 Q. And do you know for what  
22 purpose they use those kits?  
23 A. I believe that these would  
24 be used for bone marrow monitoring.  
00089:01 Q. Okay. Like we talked about  
02 earlier?  
03 A. Um-hum.  
04 Q. Bone marrow engraftment  
05 monitoring?  
06 A. Um-hum. Yes.

**17. PAGE 93:01 TO 93:18 (RUNNING 00:00:25.475)**

00093:01 Q. All right. Children's  
02 Hospital at Boston.  
03 Do you see that?  
04 A. Yes, I do.  
05 Q. Have you visited them?  
06 A. Yes, I have.  
07 Q. And do they buy ABI STR  
08 kits?  
09 A. I believe that they do.  
10 Q. Okay. And do you know how  
11 they use them?  
12 A. I believe with Children's  
13 it's in a research type of an  
14 application.  
15 Q. Okay.  
16 A. But I can't really be  
17 specific in terms of the type of  
18 research that they do there.

**18. PAGE 96:20 TO 97:13 (RUNNING 00:00:24.613)**

20 Q. All right. Then there's  
21 the University of Medicine &  
22 Dentistry of New Jersey.  
23 Do you see that?  
24 A. Yes.  
00097:01 Q. Have you visited them?  
02 A. Not in my current role.  
03 Q. Okay. Do you know if they  
04 buy ABI STR kits?  
05 A. I believe that they have in  
06 the past.  
07 Q. Okay.  
08 A. I don't know what their  
09 current situation is right now.  
10 Q. Do you know how they used  
11 them in the past?  
12 A. I believe it was in a  
13 research application as well.

**19. PAGE 99:05 TO 99:14 (RUNNING 00:00:14.004)**

05 Q. Okay. Have you visited  
06 University of Connecticut?  
07 A. In my past role, I have.  
08 Q. But not in your current?  
09 A. Not in my current role.  
10 Q. Do you know if they buy ABI  
11 STR kits?  
12 A. I believe that they had  
13 applications in the research  
14 facility.

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**20. PAGE 100:05 TO 100:14 (RUNNING 00:00:17.122)**

05 Q. Okay. So we'll stick with  
06 Dartmouth Medical School for a  
07 second.  
08 Have you visited them?  
09 A. I have not visited them.  
10 Q. Do you know if they buy ABI  
11 STR kits?  
12 A. I believe that they have  
13 purchased a kit for a research  
14 application.

**21. PAGE 102:05 TO 103:13 (RUNNING 00:01:08.742)**

05 Q. Okay. University of New  
06 Haven. Do you see that?  
07 A. Yes.  
08 Q. Have you ever visited?  
09 A. Yes.  
10 Q. In your current role?  
11 A. Yes.  
12 Q. Okay. And do you have a  
13 contact person there?  
14 A. Yes.  
15 Q. And who is that?  
16 A. I'm drawing a blank on her  
17 name, but I have visited.  
18 Q. Okay. If you think of it,  
19 we'll get back to it.  
20 Do they buy ABI STR kits?  
21 A. Yes, they do. They have a  
22 forensics program on-site there, so  
23 they do use some of our chemistries.  
24 Q. Do they use any ABI STR  
00103:01 kits for research?  
02 A. That, I -- I don't know.  
03 Q. Okay. Do you know if they  
04 use ABI STR kits for any clinical  
05 testing?  
06 A. I don't believe so. My  
07 recollection is that they used these  
08 kits as a tool for teaching for their  
09 crime program or their forensics  
10 program.  
11 Q. Okay. So they would  
12 actually use them in the classroom?  
13 A. I -- or the laboratory.

**22. PAGE 104:01 TO 105:20 (RUNNING 00:01:09.828)**

00104:01 Q. Okay. We'll skip over  
02 Niagara County Sheriff's Department,  
03 and go to Yale University.  
04 Do you see that?  
05 A. Yes.  
06 Q. And have you visited Yale?  
07 A. Yes, I have.  
08 Q. In your current role?  
09 A. In my current role, but  
10 mostly in my previous role.  
11 Q. Okay. And do they buy ABI  
12 STR kits?  
13 A. I believe that they do, but  
14 I'm not certain if this is actually  
15 Yale, per se, that actually is  
16 purchasing.  
17 Q. Oh. It could be another

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18 entity?  
19 A. It could be another entity.  
20 Q. And who would that be?  
21 A. It -- it might be the VA  
22 that is associated with Yale.  
23 Q. Okay. And that's the  
24 Veterans Administration Hospital?  
00105:01 A. Yes.  
02 Q. Okay. And, to your  
03 knowledge, does the Veterans  
04 Administration Hospital buy ABI STR  
05 kits?  
06 A. I believe there is a  
07 laboratory that does.  
08 Q. Okay. And do you know for  
09 what purpose?  
10 A. I know that it's more in  
11 the research area.  
12 Q. Okay.  
13 A. But I don't recall the  
14 specific application.  
15 Q. Have you visited the VA?  
16 A. Yes, I have.  
17 Q. Okay. And is there a  
18 contact person there?  
19 A. I believe it is Ann Marie  
20 Lacabelle.

**23. PAGE 109:03 TO 109:17 (RUNNING 00:00:24.996)**

03 Q. Okay. Columbia University.  
04 Do you see that?  
05 A. Yes.  
06 Q. Ever visited?  
07 A. Yes.  
08 Q. Do you have a contact  
09 person there?  
10 A. I do. And I'm -- I don't  
11 recall her name.  
12 Q. Okay. Is she a researcher?  
13 A. She is a researcher, yes.  
14 Q. Okay. And she buys ABI STR  
15 kits for research?  
16 A. I believe it's a research  
17 project that they do there, yes.

**24. PAGE 109:22 TO 112:24 (RUNNING 00:02:10.981)**

22 Q. Okay. Do you know if  
23 Columbia University buys ABI STR kits  
24 for any other purpose but research?  
00110:01 A. I don't believe there's any  
02 other purpose other than research.  
03 Q. Okay. MIT Lincoln  
04 Laboratory. Do you see that?  
05 A. Yes.  
06 Q. And that's the one in  
07 Cambridge, Mass?  
08 A. I don't believe so.  
09 Q. Oh. Where is it located?  
10 A. I believe this would be in  
11 Lexington.  
12 Q. Okay. Outside Boston?  
13 A. Yes.  
14 Q. All right. Have you  
15 visited?  
16 A. Yes.

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17 Q. And do you have a contact  
18 there?  
19 A. Yes.  
20 Q. One person or several  
21 people?  
22 A. One main person.  
23 Q. Okay. Who is that?  
24 A. And that would be Martha  
00111:01 Petrovick.  
02 Q. Okay. And is she a  
03 researcher?  
04 A. She is a researcher.  
05 Q. Okay. And what does she  
06 do?  
07 A. I really don't know.  
08 Q. Okay.  
09 A. At that facility, I don't  
10 know if they really let you know what  
11 they do there, because -- well,  
12 because of the contract, military  
13 types of contracts that they have  
14 there. I don't know what they really  
15 do there.  
16 Q. Okay. Have you discussed  
17 -- well, let me ask you first. Do  
18 they use ABI STR kits?  
19 A. I believe they do, yes.  
20 Q. Okay. And have you talked  
21 to your contact there about the use  
22 of those kits for her purpose?  
23 A. I've had a discussion  
24 and -- but I do not know what the  
00112:01 purpose is for their use.  
02 Q. Okay. Do you know  
03 generally whether it's a research  
04 purpose or a clinical purpose?  
05 A. I believe it would have to  
06 be a research purpose.  
07 Q. Okay. And then there's  
08 part -- oh, let me ask you about MIT  
09 Lincoln Lab. \$41,795 in sales in  
10 2010.  
11 Does that comport with your  
12 recollection about the size of the  
13 business there?  
14 A. That sounds about right,  
15 yes.  
16 Q. Okay. And then 60,000 year  
17 to date, 2011. Does that sound about  
18 right?  
19 A. Yes.  
20 Q. Okay. So the work there is  
21 increasing?  
22 A. Yes. I would say -- I  
23 would say so, based -- just based on  
24 the numbers.

25. PAGE 114:03 TO 114:23 (RUNNING 00:00:40.299)

03 Q. Okay. And have you visited  
04 Mass General?  
05 A. Yes.  
06 Q. And do you have a contact  
07 there?  
08 A. Yes.  
09 Q. And is it clinical or  
10 research?

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11 A. I believe it is clinical.  
12 Q. Okay. And who's the  
13 contact?  
14 A. I believe that's Jessica  
15 Reid.  
16 Q. Okay. And do you know what  
17 clinical application they use?  
18 A. I believe one of the -- one  
19 of the applications, they're a tissue  
20 typing laboratory.  
21 Q. Okay. So do they buy ABI  
22 STR kits for tissue typing?  
23 A. I believe that they may.

**26. PAGE 115:08 TO 116:12 (RUNNING 00:00:43.679)**

08 Q. Okay. Let's go to Brigham  
09 and Women's Hospital, which you said  
10 was also part of the Partners Group.  
11 Have you visited there?  
12 A. Yes.  
13 Q. Okay. Do you have a  
14 contact there?  
15 A. Yes.  
16 Q. And who is that?  
17 A. That would be Earl Smith.  
18 Q. All right. And who is Earl  
19 Smith?  
20 A. He is more of an  
21 administrator.  
22 Q. Okay. And do they buy ABI  
23 STR kits at Brigham and Women's  
24 Hospital?  
00116:01 A. Yes.  
02 Q. And how do they use those  
03 kits?  
04 A. I'm not 100 percent  
05 certain, because I pretty much deal  
06 directly with Earl.  
07 Q. Okay.  
08 A. It is in a tissue typing  
09 laboratory.  
10 Q. Okay. So it would be for a  
11 clinical purpose?  
12 A. It may.

**27. PAGE 116:13 TO 116:17 (RUNNING 00:00:08.448)**

13 Q. Okay. Rhode Island  
14 Department of Health, is that a  
15 clinical entity or a forensic entity?  
16 A. That would be a forensics  
17 entity.

**28. PAGE 116:18 TO 117:14 (RUNNING 00:00:37.295)**

18 Q. Okay. Rutgers State  
19 University. Do you see that?  
20 A. Um-hum.  
21 Q. Have you visited?  
22 A. Yes.  
23 Q. Recently?  
24 A. Within the past six months.  
00117:01 Q. Okay. And do they buy ABI  
02 STR kits?  
03 A. I believe they do.  
04 Q. Okay. And do you have a  
05 contact there?

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06 A. I believe that's Amrik  
07 Sahota.  
08 Q. Okay. And who's Amrik  
09 Sahota?  
10 A. I believe he is a  
11 researcher.  
12 Q. Okay. And is he the one  
13 buying the ABI STR kits?  
14 A. I believe so.

**29. PAGE 117:15 TO 117:17 (RUNNING 00:00:02.821)**

15 Q. And do you know what kind  
16 of research he does?  
17 A. That, I do not know.

**30. PAGE 124:09 TO 125:12 (RUNNING 00:01:27.097)**

09 A. Yes. It would denote the  
10 instrument configuration.  
11 Q. Okay. And then the last  
12 header before the Grand Total is STR  
13 Kits.  
14 Do you see that?  
15 A. Yes.  
16 Q. Okay. And on that line, it  
17 indicates that STR kits sales in 2010  
18 were approximately \$279,000.  
19 Does that comport with your  
20 recollection for your sales in 2010  
21 of the ABI STR kits?  
22 A. No, it does not.  
23 Q. And what's your  
24 recollection?  
00125:01 A. This document would really  
02 only contain what would be considered  
03 shared territory for my sales. This  
04 would not encompass all of the crime  
05 laboratories that I also support as  
06 well.  
07 So this figure would -- the  
08 way the question was asked, this  
09 figure really would not assume what  
10 my total sales were within my total  
11 territory based on -- based on this  
12 information.

**31. PAGE 125:23 TO 126:19 (RUNNING 00:01:12.041)**

23 Q. Okay. Is it a list of all  
24 your research customers?  
00126:01 A. Yes. This would be a mix  
02 of research, as well as some  
03 forensics.  
04 Q. And would this be a list of  
05 all your clinical customers?  
06 A. It would be a list, as you  
07 defined clinical customers being  
08 mine. I would say that I support  
09 some of those customers.  
10 I do have counterparts that  
11 also would cover these customers, and  
12 they would sell, as mentioned  
13 earlier, things like sequencing types  
14 of chemistries, realtime PCR types of  
15 chemistries.  
16 So I would not necessarily  
17 be the only person or salesperson

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18 that would touch these customers, per  
19 se.

**32. PAGE 127:15 TO 127:18 (RUNNING 00:00:05.968)**

15 Q. And so what's really  
16 missing here is your other forensic  
17 clients?  
18 A. Yes.

**33. PAGE 133:23 TO 134:13 (RUNNING 00:01:36.681)**

23 Q. Mr. Rossi, the court  
24 reporter has marked as Exhibit 7 a  
00134:01 multipage document, Bates stamped  
02 Life-0002063 and it goes to 2068.  
03 Do you see that?  
04 If you could just take a  
05 look at that, I'll ask you a couple  
06 of questions.  
07 A. Okay.  
08 (Witness reviews document.)  
09 Okay.  
10 Q. And do you recognize this  
11 document?  
12 A. I've probably seen it at  
13 some time.

**34. PAGE 136:12 TO 137:03 (RUNNING 00:00:42.007)**

12 Q. So when I looked at this, I  
13 assumed that this was tracking what's  
14 going on in these various entities  
15 with regard to evaluating and  
16 deciding whether to adopt the  
17 Identifiler Plus STR kit.  
18 Is that your understanding,  
19 too?  
20 A. It looks like that's what  
21 it would imply, yes.  
22 Q. Now, was the Identifiler  
23 Plus a new kit?  
24 A. Yes.  
00137:01 Q. Okay. Did it come out in  
02 2010?  
03 A. I believe so.

**35. PAGE 141:13 TO 142:20 (RUNNING 00:01:08.393)**

13 Q. Okay. Turning now to  
14 what's been Bates stamped 2065. It's  
15 about the third page in on this. And  
16 going all the way to the bottom.  
17 There's a bold header, Nonforensic  
18 HID Opportunities.  
19 Do you see that?  
20 A. Yes.  
21 Q. Okay. And then down below,  
22 there's the name Mike, next to  
23 Northwestern University.  
24 Do you see that?  
00142:01 A. Yes.  
02 Q. And then Rob, next to SUNY  
03 Stony Brook.  
04 Do you see that?  
05 A. Yes.  
06 Q. And that's you, Rob Rossi?  
07 A. Yes.  
08 Q. Okay. And we talked a

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09 little bit about Stony Brook today?  
10 A. Yes.  
11 Q. And then there's MGH. That  
12 stands for Mass General Hospital,  
13 right?  
14 A. Yes.  
15 Q. And, again, your name, Rob  
16 Rossi, next to that?  
17 A. Yes.  
18 Q. And have you seen this  
19 before, this page?  
20 A. I may have at one point.

36. PAGE 148:04 TO 150:08 (RUNNING 00:03:13.003)

04 Q. Mr. Rossi, the court  
05 reporter has marked a three-page  
06 document Exhibit 8. It's Bates  
07 stamped Life-0001695 and it goes to  
08 1697.  
09 If you can have a look at  
10 this.  
11 A. (Witness reviews document.)  
12 Okay.  
13 Q. Okay. So let's start on  
14 the second page, if we can. These  
15 e-mail trains kind of go from back to  
16 front, so we'll do that, too.  
17 If you start at the bottom  
18 of what's been Bates stamped 1696,  
19 you'll see there's an e-mail from a  
20 Carolyn Pressman to you, Robert  
21 Rossi.  
22 Do you see that?  
23 A. Yes.  
24 Q. Do you recall this e-mail?  
00149:01 A. I did receive it. I don't  
02 quite recall the level of detail.  
03 Q. Okay.  
04 A. I did receive it.  
05 Q. So Carolyn Pressman, is  
06 that a Life Tech employee?  
07 A. A former Life Tech  
08 employee.  
09 Q. Okay. And she e-mailed you  
10 about cell line authentication for  
11 BMS.  
12 Do you see that?  
13 A. Yes.  
14 Q. And who's BMS?  
15 A. I believe that would be  
16 Bristol-Myers Squibb.  
17 Q. Okay. And she asked  
18 whether you cover all accounts when  
19 it comes to HID.  
20 Do you see that?  
21 A. Yes.  
22 Q. Okay. And, now, up above  
23 on the page Bates stamped 1696, is an  
24 e-mail that you authored back to  
00150:01 Carolyn Pressman.  
02 Do you see that?  
03 A. Yes.  
04 Q. And do you recall this  
05 e-mail?  
06 A. This is also part of the  
07 same e-mail chain, so, as I mentioned

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08 earlier, I do recall receiving it.

37. PAGE 150:14 TO 151:15 (RUNNING 00:01:00.096)

14 Q. Okay. And so you write  
15 back and you say, I do cover New York  
16 and New England for HID accounts such  
17 as crime labs.

18 And then you go on and say,  
19 and nonHID accounts where products  
20 may be used for cell line  
21 authentication, identification,  
22 transplantation, et cetera.

23 Do you see that?

24 A. Yes.

00151:01 Q. And what were you  
02 communicating to Carolyn Pressman  
03 with that sentence?

04 A. I would say, just as the  
05 sentence implies, that the area that  
06 I cover, as well as the types of  
07 accounts that I would cover.

08 Q. Okay. And we had talked  
09 about earlier, when we were looking  
10 at lists of customers, that you have  
11 responsibility for some forensic  
12 customers, like crime labs?

13 A. Um-hum.

14 Q. Is that right?

15 A. Yes.

38. PAGE 152:02 TO 153:19 (RUNNING 00:01:52.686)

02 The nonHID accounts, these  
03 are the accounts that use ABI STR  
04 kits for things like bone marrow  
05 transplant engraftment monitoring  
06 like we talked about this morning?

07 A. In addition -- and I would  
08 say, in addition to when you  
09 mentioned Stony Brook, a fair number  
10 of other products that we would also  
11 offer to them as well, yes.

12 Q. Okay. But just looking at  
13 ABI STR kits, those areas that you  
14 list here of cell line  
15 authentication, transplantation,  
16 those are -- as we discussed earlier  
17 today, those are accounts that would  
18 use ABI STR kits for purposes such as  
19 bone marrow engraftment monitoring?

20 A. Yes. And in this case, and  
21 with respect to this memo, I just  
22 also want to point out that this was  
23 dated March the 25th.

24 Q. Um-hum.

00153:01 A. So this was, more or less,  
02 just about three months into my new  
03 role.

04 Q. Okay.

05 A. So -- and this -- some of  
06 this comes from based on what I would  
07 understand to be the areas that I  
08 would cover.

09 So this is -- this is very  
10 early on into my role and I was  
11 primarily more focused in and around

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12 the crime laboratories, as them being  
13 my primary focus within human  
14 identification forensics.

15 Q. Okay. Now, as your time  
16 has gone on from March 25th, 2010, is  
17 it still true that you handle both  
18 crime labs and nonHID accounts?

19 A. Yes.

**39. PAGE 159:12 TO 160:20 (RUNNING 00:01:25.848)**

12 Q. Okay. Putting aside this  
13 document for a second, what was your  
14 understanding, in January of 2010, as  
15 to what customers you should target  
16 for ABI STR kits?

17 A. The primary customers that  
18 I should target would be the crime  
19 laboratories.

20 Q. Anyone else?

21 A. And the secondary targets  
22 may be the researchers, clinical  
23 types of researchers.

24 Q. Okay. Anyone else?

00160:01 A. And then, again, as you saw  
02 earlier, some of the accounts that  
03 may utilize our kits, such as, say, a  
04 Mass General, where they've been, I  
05 want to say an existing customer in  
06 my role, in my role as, more or less,  
07 to be able to service those existing  
08 customers.

09 Q. Okay. And those existing  
10 customers would be of what type?

11 A. They could be of a number  
12 of types. Again, the crime type  
13 laboratories would be primary. And  
14 then, also, basic research types of  
15 customers that would be utilizing our  
16 technology.

17 And then there are clinical  
18 laboratories that were using our  
19 chemistry. But it wouldn't be  
20 exclusive to just those customers.

**40. PAGE 181:24 TO 182:15 (RUNNING 00:01:00.240)**

24 Q. Mr. Rossi, the court  
00182:01 reporter has marked as Exhibit 15 a  
02 two-page document, Bates stamped  
03 Life-0002027 to 2028.

04 And my first question is,  
05 do you recognize it?

06 A. Yes, I believe I've seen  
07 this.

08 Q. Okay. And let's start at  
09 the bottom of the first page. Is  
10 that an e-mail you authored?

11 A. Yes.

12 Q. And do you recall the  
13 circumstances?

14 A. (Witness reviews document.)  
15 Yes.

**41. PAGE 183:05 TO 184:21 (RUNNING 00:01:24.942)**

05 Q. Okay. And you wrote this  
06 e-mail about the fact that Stony

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07 Brook was going to buy a 3500 XL  
08 instrument?  
09 A. Yes.  
10 Q. And that's an expensive  
11 instrument. How costly is that?  
12 A. That would be in the  
13 range -- for the instrument itself  
14 would be right around \$165,000.  
15 Q. Okay. And then would there  
16 be other charges for software?  
17 A. Yes.  
18 Q. And what would that be?  
19 A. That would be in the range  
20 of, I want to say, \$15,000.  
21 Q. Okay. And this is the 3500  
22 that we talked about that Stony Brook  
23 actually purchased?  
24 A. Yes, it is.  
00184:01 Q. Okay. And, now, at the top  
02 of this document, on the first page  
03 that's marked 2027, there's an e-mail  
04 back to you from Dave Oehler.  
05 Do you see that?  
06 A. Yes.  
07 Q. And that was April 16th,  
08 2010.  
09 Do you see that?  
10 A. Yes.  
11 Q. And at this time Dave  
12 Oehler was your boss, like we talked  
13 about?  
14 A. Yes.  
15 Q. Okay. And he comes back,  
16 Great, exclamation point. This is an  
17 HID instrument, right?  
18 And then he says, Good  
19 job. Dave.  
20 Do you see that?  
21 A. Yes.

**42. PAGE 185:22 TO 186:10 (RUNNING 00:00:26.213)**

22 Q. Okay. And going down to  
23 the sentence that connects -- bridges  
24 over to the second page, you see your  
00186:01 sentence that says, Their application  
02 is for monitoring bone marrow  
03 transplants using STRs.  
04 Do you see that?  
05 A. Yes.  
06 Q. And so Dave Oehler was  
07 aware that that was the use you  
08 understood they were going to put the  
09 machine and the kits to?  
10 A. Initially, yes.

**43. PAGE 186:11 TO 187:06 (RUNNING 00:01:00.940)**

11 Q. Okay. And who's Dr. Allen  
12 Norin?  
13 A. He is one of the scientists  
14 or doctors that came on board after a  
15 lot of this transaction was in place.  
16 So -- and this is where  
17 it's more the case originally they  
18 were looking to generate one  
19 application. And Dr. Norin had come

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20 on board, and based on some of the  
21 difficulties that they were having,  
22 it turned out that they did not adopt  
23 this technology to do this particular  
24 type of test.  
00187:01 Q. Okay.  
02 A. This is where Dr. Norin had  
03 decided that realtime PCR may be a  
04 better approach be than utilizing the  
05 3500 for the human identification  
06 application here.

**44. PAGE 187:07 TO 187:11 (RUNNING 00:00:17.770)**

07 Q. Okay. Was it your custom,  
08 as a salesperson, to know in advance  
09 of the purchase of an instrument what  
10 the customer was going to do with it?  
11 A. In most cases, yes.

**45. PAGE 188:05 TO 189:15 (RUNNING 00:01:14.912)**

05 Q. Okay. And do you see the  
06 first paragraph, last sentence,  
07 starting with, Two main applications  
08 for this will be engraftment and HLA?  
09 A. Yes.  
10 Q. And you authored that?  
11 A. Yes.  
12 Q. And at the time that was  
13 your belief as to how the Stony Brook  
14 lab would utilize the instrument?  
15 A. As to which would be  
16 primary for them and which would be  
17 secondary, I think, even in the case  
18 at Stony Brook, I don't think that  
19 they were certain which one, based on  
20 the information that I received.  
21 Q. Right.  
22 So, putting aside secondary  
23 or primary. At the time you wrote  
24 this e-mail, it was your  
00189:01 understanding that bone marrow  
02 engraftment monitoring and HLA  
03 testing were two of the applications  
04 they were going to put this  
05 instrument to?  
06 A. At initial purchase, I  
07 believe, it was going to be  
08 engraftment. And then, at a later  
09 date, it seemed to be that it could  
10 be for HLA as well.  
11 Q. Okay. And you were  
12 communicating this to your boss at  
13 the time, Dave Oehler, again, in the  
14 To line?  
15 A. Yes.

**46. PAGE 194:20 TO 195:09 (RUNNING 00:00:35.686)**

20 Q. Mr. Rossi, the court  
21 reporter has marked a two-page  
22 document Exhibit 17. It's Bates  
23 stamped Life-0227939 to 940.  
24 And starting on the first  
00195:01 page, I'd ask whether you recognize  
02 it?  
03 A. Yes.

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04 Q. And how is it that you  
05 recognize it?  
06 A. I authored it.  
07 Q. Okay. And do you recall  
08 authoring it?  
09 A. Yes.

**47. PAGE 197:03 TO 198:22 (RUNNING 00:01:29.953)**

03 Q. Okay. And then you went on  
04 and you said, This is a competitive  
05 opportunity to convert customer that  
06 currently uses Promega for bone  
07 marrow engraftment.  
08 Do you see that?  
09 A. Yes.  
10 Q. And how did you have that  
11 information?  
12 A. I believe that would have  
13 come from customer interaction.  
14 Q. Okay. And so is this an  
15 attempt at marketing a customer to  
16 capture some of Promega's business  
17 regarding bone marrow engraftment  
18 monitoring?  
19 A. I think also from a  
20 standpoint of training, we would have  
21 had to train the customer utilizing  
22 our chemistry as well.  
23 Q. Okay. Oh, is that why the  
24 discount?  
00198:01 A. That would be the discount,  
02 yes.  
03 Q. Okay. So to make it a  
04 little easier to make the switch?  
05 A. Our application scientists  
06 could not train utilizing another  
07 chemistry.  
08 Q. So they couldn't do  
09 Promega?  
10 A. They could not utilize  
11 Promega, no.  
12 Q. Okay. So they needed an  
13 ABI STR kit in order to train the  
14 customer?  
15 A. That would be correct, yes.  
16 Q. Okay. And then if the  
17 customer thought that the ABI STR kit  
18 was better, then maybe you could get  
19 them to convert over to ABI, instead  
20 of Promega?  
21 A. If that would be the way  
22 they would chose to go, yes.

**48. PAGE 203:24 TO 204:13 (RUNNING 00:01:32.879)**

24 Q. The exhibit is marked 19.  
00204:01 It's Bates stamped Life-0160242 and  
02 it goes to 43.  
03 If you could have a look at  
04 that.  
05 A. (Witness reviews document.)  
06 Q. Okay?  
07 A. Okay.  
08 Q. So do you recognize the  
09 document?  
10 A. Yes.

**Promega Corporation v. Life Technologies Corporation**

11 Q. This is an e-mail you  
12 authored?  
13 A. Yes.

49. PAGE 205:14 TO 206:08 (RUNNING 00:00:35.816)


14 Q. Okay. And you say, The  
15 group will be doing BM engraftment.  
16 That's bone marrow engraftment  
17 monitoring?  
18 A. Yes.  
19 Q. With ABI STR kits?  
20 A. Yes.  
21 Q. Okay.  
22 A. Well, this -- let me  
23 re-qualify that.  
24 This is something where  
00206:01 looking at the date they were just  
02 starting out, so I was assuming that  
03 they would be doing some of this  
04 work. It hadn't been completely  
05 confirmed yet prior to our meeting.  
06 Q. And eventually it did  
07 become confirmed, right?  
08 A. Yes.

50. PAGE 210:05 TO 211:12 (RUNNING 00:01:17.491)


05 Q. Okay. Did you use Lisa  
06 Ortuno for technical support of some  
07 of your accounts while she was still  
08 with the company?  
09 A. Yes, I did.  
10 Q. Okay. And you would  
11 communicate with her similarly to  
12 this, you would give her information  
13 in an e-mail?  
14 A. In some cases, yes.  
15 Q. Did you ever interact with  
16 Lisa Ortuno face-to-face?  
17 A. Yes.  
18 Q. Okay. And did she support  
19 some of your clinical accounts?  
20 A. Could you be more specific  
21 with respect to the clinical  
22 accounts?  
23 Q. Sure.  
24 Is there any particular  
00211:01 account in your territory that you  
02 can recall that used ABI STR kits for  
03 clinical purposes that you asked Lisa  
04 Ortuno to help you with?  
05 A. So I believe the Dartmouth-  
06 Hitchcock may have been one of them.  
07 Q. Okay.  
08 A. And, also, I believe the  
09 SUNY Stony Brook for that human  
10 identification application, I believe  
11 that would have been another one as  
12 well.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:00:45.684)

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 **Waltman, Dawn (Vol. 01) - 09/30/2011**

1 CLIP (RUNNING 00:22:15.716)

 QC020412

WALTDES

41 SEGMENTS (RUNNING 00:22:15.716)



**1. PAGE 3:03 TO 4:03 (RUNNING 00:01:03.818)**

03 THE VIDEOGRAPHER: This is Tape No. 1 in  
04 the video deposition of Dawn Waltman in the matter  
05 of Promega Corporation versus Life Technology  
06 Corporation, et al, filed in the United States  
07 District Court for the western district of  
08 Wisconsin.

09 Today's date is Friday, September 30,  
10 2011, the time is now 9 o'clock a.m.

11 We are located at the Hampton Inn White  
12 Marsh, 8225 Town Center Drive, Baltimore, Maryland  
13 21236.

14 At this time will counsel please  
15 identify themselves for the record, beginning with  
16 the attorney giving notice.

17 MR. CARROLL: Pete Carroll and Jerry  
18 O'Neil for Medlen & Carroll and Troupis law firm.

19 MR. MCCARTHY: Michael McCarthy for  
20 Parsons, Behle & Latimer, appearing on behalf of  
21 Defendant, Life Tech.

22 THE VIDEOGRAPHER: Also present are the  
23 court reporter, Angie Kilby, representing Amicus  
24 Court Reporting, and the videographer, Steven  
00004:01 Jones, also representing Amicus Reporting.

02 At this time the court reporter will  
03 please swear in the witness.

**2. PAGE 4:12 TO 4:19 (RUNNING 00:00:09.678)**

12 Q. Good morning.

13 A. Good morning.

14 Q. Can you state your full name for the  
15 record?

16 A. Dawn Annette Waltman.

17 Q. Your current address?

18 A. 1217 Greystone Road, Bel Air, Maryland  
19 21015.

**3. PAGE 6:02 TO 6:05 (RUNNING 00:00:06.585)**

02 Q. Who are you currently employed by?

03 A. Life Technologies.

04 Q. How long have you been employed there?

05 A. 16 years.

**4. PAGE 9:12 TO 9:19 (RUNNING 00:00:22.302)**

12 Q. So account manager happened how long ago  
13 and for which company?

14 A. It was Applied Biosystems at the time,  
15 and it's been six years.

16 I took -- in that 16 years with the  
17 company, I took four months to try something else  
18 and came back. And when I came back, I came back  
19 to a different division as an account manager.

CONFIDENTIAL

page 1

**PTX1356**

PTX1356\_0001

**Promega Corporation v. Life Technologies Corporation**

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**5. PAGE 9:20 TO 10:04 (RUNNING 00:00:21.134)**

20 Q. About what year was that, so we can get  
21 a period?  
22 A. 1999 through 2005.  
23 Q. Okay.  
24 A. 1999 is when I took my four months.  
00010:01 Q. Okay.  
02 A. No, I take that back, I'm sorry.  
03 It was 2005, March, I took four months  
04 and came back in June 2005.

**6. PAGE 10:05 TO 10:24 (RUNNING 00:00:32.773)**

05 Q. Okay. At that time you became account  
06 manager?  
07 A. Correct.  
08 Q. Okay. And who was that for? What  
09 company at that time?  
10 A. Applied Biosystems.  
11 Q. And what were your duties in that  
12 position in 2005?  
13 A. As account manager.  
14 Q. Right. What kind of duties would that  
15 have?  
16 A. To sell instrumentation and reagents to  
17 forensic accounts.  
18 Q. Okay. Now, these forensics accounts,  
19 these are crime labs?  
20 A. Correct.  
21 Q. Sheriff departments?  
22 A. Correct.  
23 Q. Police, that kind of stuff?  
24 A. Correct.

**7. PAGE 11:01 TO 11:05 (RUNNING 00:00:20.608)**

00011:01 Q. Any sales to nonforensic accounts in  
02 2005?  
03 A. In 2005 I would probably say very  
04 little, maybe one percent of sale -- total sales  
05 maybe went to a non-forensics.

**8. PAGE 11:06 TO 11:09 (RUNNING 00:00:14.212)**

06 Q. And what type of entity would the  
07 nonforensic customer be?  
08 A. It would be somebody that was doing  
09 basic research at a university type of atmosphere.

**9. PAGE 11:10 TO 11:17 (RUNNING 00:00:17.053)**

10 Q. Okay. Any clinical labs?  
11 A. No.  
12 Q. Okay. Did you at some point from 2005  
13 onward begin to sell into clinical labs?  
14 A. No.  
15 Q. You, yourself, haven't sold into  
16 clinical labs?  
17 A. No.

**10. PAGE 12:09 TO 12:21 (RUNNING 00:00:53.660)**

09 BY MR. CARROLL:  
10 Q. So the court reporter has marked as  
11 Exhibit 1 a document that's been Bates stamped  
12 Life-0212055.  
13 Why don't you take a second to look that  
14 over.

**Promega Corporation v. Life Technologies Corporation**

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15 Have you had a chance to look at it?  
16 A. Yes, sir.  
17 Q. Do you recognize it?  
18 A. Yes, sir.  
19 Q. It is -- looks like an e-mail you  
20 created?  
21 A. Yes.

**11. PAGE 33:02 TO 33:07 (RUNNING 00:00:12.131)**

02 Q. What about 2006? Did you do sales in  
03 2006?  
04 A. Yes.  
05 Q. And were those limited to forensic labs  
06 in 2006?  
07 A. 99 percent, yes.

**12. PAGE 33:11 TO 35:07 (RUNNING 00:01:06.876)**

11 Q. 2007, were you still selling?  
12 A. Yes.  
13 Q. STR kits?  
14 A. Yes.  
15 Q. Forensic labs?  
16 A. Yes.  
17 Q. Any non-forensic?  
18 A. About 2 percent.  
19 Q. Okay. 2008, were you still selling STR  
20 kits?  
21 A. Yes.  
22 Q. Yourself, personally?  
23 A. Yes.  
24 Q. Okay. And to forensics labs?  
00034:01 A. Yes.  
02 Q. Any non-forensic labs?  
03 A. About 2 percent.  
04 Q. 2009, were you still selling?  
05 A. Yes.  
06 Q. STR kits?  
07 A. Yes.  
08 Q. Into forensic labs?  
09 A. Yes.  
10 Q. Any non-forensic sales?  
11 A. About 2 percent.  
12 Q. 2010, were you still selling?  
13 A. Yes.  
14 Q. And were you selling STR kits?  
15 A. Yes.  
16 Q. To forensic labs?  
17 A. Yes.  
18 Q. And non-forensic?  
19 A. Yes.  
20 Q. What percentage at that point?  
21 A. Maybe 2 to 3 percent.  
22 Q. Okay. 2011, this year, are you still  
23 selling?  
24 A. Yes.  
00035:01 Q. STR kits?  
02 A. Yes.  
03 Q. Non-forensic labs or non-forensic  
04 customers?  
05 A. About 2 to 3 percent.  
06 Q. Okay. And forensic customers as well?  
07 A. Make up the other 97, 98 percent.

**13. PAGE 37:05 TO 38:06 (RUNNING 00:01:24.647)**

05 Q. Okay. Coming back to Exhibit 1, which

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06 is 2008, and you've indicated you were selling at  
 07 that time, did you have occasion to sell STR kits  
 08 to customers for basic research bone marrow  
 09 engraftment?  
 10 A. In research environment, yes.  
 11 Q. Okay. And do you recall who those  
 12 customers were in 2008?  
 13 A. Umm, yes.  
 14 Q. Who were they?  
 15 A. Johns Hopkins. That's --  
 16 Q. Anybody else?  
 17 A. For basic research with bone marrow  
 18 engraftment, not that I can recall.  
 19 Q. Okay. And who, if anyone, did you  
 20 interact with at Johns Hopkins in connection with  
 21 sales of STR kits for basic research bone marrow  
 22 engraftment?  
 23 A. For STR kits and basic research for bone  
 24 marrow engraftment, I dealt with Dr. Eshleman.  
 00038:01 Q. And who is Dr. Eshleman?  
 02 A. He is a molecular pathologist who runs a  
 03 research lab at the university and is also a  
 04 gastroenterologist.  
 05 Q. Okay. That was in 2008?  
 06 A. Correct.

**14. PAGE 38:07 TO 39:09 (RUNNING 00:01:24.035)**

07 Q. Do you still sell to Johns Hopkins in  
 08 regard to STR kits with regard to research bone  
 09 marrow engraftment?  
 10 A. I couldn't tell you the last time they  
 11 bought a kit. But in the last several months, no.  
 12 Q. Okay. So from 2008 -- let's use this  
 13 date, September 17, 2008 -- forward, did you have  
 14 occasion to visit Dr. Eshleman's lab at Johns  
 15 Hopkins in connection with his use of STR kits for  
 16 basic research bone marrow engraftment?  
 17 A. Since 2008, yes.  
 18 Q. Okay. And this would be an actual  
 19 onsite visit at the lab where you would show up?  
 20 A. Actually, it would be a place for coffee  
 21 at the university.  
 22 Q. Okay. What was the purpose of such a  
 23 visit by you to Johns Hopkins?  
 24 A. For this customer, first and foremost,  
 00039:01 was personal --  
 02 Q. Okay.  
 03 A. -- because I have known him for way  
 04 before the 2008 time frame.  
 05 Q. Okay.  
 06 A. And, second would be to follow up on  
 07 publications I have seen on the pub med website --  
 08 Q. Okay.  
 09 A. -- about his research.

**15. PAGE 39:10 TO 40:10 (RUNNING 00:01:32.195)**

10 Q. All right. Continuing on with Paragraph  
 11 1 of what we've marked as Exhibit 1, the sentence  
 12 says, we have some old application notes, but we  
 13 need something with just the basics of what STRs  
 14 are and how they work.  
 15 What were the old application notes you  
 16 were referring to there?  
 17 A. Application notes are internal documents  
 18 that explain different applications, kind of a

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19 one-page quick definition.  
 20 Q. And was this indicating here in Exhibit  
 21 1 that internally you had some kind of write-up on  
 22 STR kits for basic research bone marrow  
 23 engraftment?  
 24 A. For basic research, yes.  
 00040:01 Q. And did you also have some kind of  
 02 internal write-up for STR kit use for cell line  
 03 authentication?  
 04 A. In the research, yes.  
 05 Q. Okay. Now, have those internal  
 06 documents continued through the years to be  
 07 something you've used since this date of September  
 08 17, 2008?  
 09 A. Probably have looked at them. Used them  
 10 very rarely.

**16. PAGE 40:11 TO 41:06 (RUNNING 00:00:57.477)**

11 Q. Okay. What about the Power Point  
 12 referred to in Paragraph 2? Was that, in fact,  
 13 ever created, to your knowledge?  
 14 A. Yes.  
 15 Q. And who created that?  
 16 A. I think it started with somebody, Mary  
 17 Bozini (phonetic) and Lisa Calandro (phonetic) and  
 18 Lisa Ortuno put together the basic STR 101 Power  
 19 Point.  
 20 Q. Okay. So, in fact, it happened?  
 21 A. Yes.  
 22 Q. And did you end up using the Power Point  
 23 they put together?  
 24 A. For some trainings on -- to basic  
 00041:01 researchers on basic STR 101.  
 02 Q. Okay.  
 03 A. What an STR was.  
 04 Q. All right. Did you use it kind of as a  
 05 sales tool?  
 06 A. No, it was more of an education tool.

**17. PAGE 41:14 TO 42:06 (RUNNING 00:00:44.409)**

14 What I am trying to understand in terms  
 15 of the use of these as a sales tool or not, as a  
 16 sales tool or as a training, at what stage in the  
 17 selling process would you use something like this?  
 18 Would it be after you've already made the sale?  
 19 Before they've committed to a sale?  
 20 That's what I am trying get at.  
 21 A. It varied.  
 22 Q. So it might, in fact, be training you  
 23 did after they had already committed to purchase a  
 24 STR kit?  
 00042:01 A. Correct.  
 02 Q. Okay. Would you come into the lab and  
 03 do this presentation for the technical people?  
 04 A. I personally wouldn't be the one to do  
 05 that. Somebody like Lisa Ortuno or somebody that  
 06 was more technical than I would.

**18. PAGE 42:07 TO 42:10 (RUNNING 00:00:07.728)**

07 Q. Okay. But did you ever have occasion to  
 08 use this Power Point yourself?  
 09 MR. MCCARTHY: Objection to form.  
 10 THE WITNESS: In what manner?

**Promega Corporation v. Life Technologies Corporation**

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19. PAGE 42:12 TO 42:13 (RUNNING 00:00:02.711)

12 Q. With a customer, or prospective  
13 customer.

20. PAGE 42:15 TO 42:17 (RUNNING 00:00:02.225)

15 THE WITNESS: I never went through it  
16 with a customer.  
17 BY MR. CARROLL:

21. PAGE 44:05 TO 44:20 (RUNNING 00:00:53.238)

05 Q. And has that title changed since 2008?  
06 A. It is still HID account manager. Now  
07 they say it is senior, supposed to mean the same  
08 as executive. It is now senior HID account  
09 manager.  
10 Q. Okay.  
11 A. It is the same.  
12 Q. Do you have any title, official, not  
13 official, with regard to non-HID activities?  
14 A. What do you mean, non-official?  
15 Q. Umm, I have seen reference in some  
16 documents to people being lead, whatever that  
17 means, on certain areas. Some people are lead in  
18 one thing, some people are lead in non-HID.  
19 Do you have any kind of designation like  
20 that that you are lead in either HID or non-HID?

22. PAGE 44:22 TO 45:02 (RUNNING 00:00:14.890)

22 THE WITNESS: Lead -- I was a contact  
23 person for both forensics and nonforensic  
24 applications for generalist sales. I was a point  
00045:01 of contact.  
02 BY MR. CARROLL:

23. PAGE 45:03 TO 45:11 (RUNNING 00:00:34.630)

03 Q. Help me with that. If you are a point  
04 of contact, does that mean other salespeople, when  
05 they would have a question, would consider you the  
06 person to first go with that question for that  
07 particular topic?  
08 A. In the mid Atlantic area.  
09 Q. Okay. So are you the point of contact  
10 for non-HID sales of STR kits in the mid Atlantic?  
11 A. Yes.

24. PAGE 45:22 TO 46:05 (RUNNING 00:00:34.750)

22 Q. Miss Waltman, before the break we had  
23 talked about you being kind of a point of contact  
24 for non-HID sales of STR kits in the mid Atlantic.  
00046:01 A. (Responded by nodding head.)  
02 Q. In that capacity, have you interacted  
03 with other salespeople from Life Technologies and  
04 been asked to assist in that context of non-HID  
05 sale?

25. PAGE 46:07 TO 46:11 (RUNNING 00:00:08.535)

07 THE WITNESS: Yes and yes.  
08 BY MR. CARROLL:  
09 Q. What do you mean, yes and yes?  
10 A. Yes, reps would contact me, and, yes, I  
11 would assist them.

**Promega Corporation v. Life Technologies Corporation**

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26. PAGE 46:17 TO 48:04 (RUNNING 00:01:40.623)

17 Q. The non-forensic, non-HID application.  
18 Was it because they were not familiar?  
19 What would cause them to contact you on a non-HID  
20 matter?  
21 A. Most of the time it was to gather  
22 reference material.  
23 Q. Okay. And so these are salespeople from  
24 Life Tech?  
00047:01 A. Correct.  
02 Q. And they would want this reference  
03 material as a sales tool?  
04 A. More of information gathering for  
05 themselves.  
06 Q. Okay. So they could understand the  
07 non-HID use?  
08 A. Correct.  
09 Q. Did you have such materials?  
10 A. Sometimes I had materials, sometimes I  
11 told them to look at pub med --  
12 Q. Okay.  
13 A. -- on the internet.  
14 Q. As you sit here today in 2011, do you  
15 have a stash of materials on non-HID STR use?  
16 A. Yes.  
17 Q. And do you share that, again, in the  
18 2011 period, with salespeople that use you as a  
19 point of contact in the mid Atlantic states for  
20 non-HID matters?  
21 A. Yes.  
22 Q. What is in that stash of materials, if  
23 you could tell me? Again, we are using 2011,  
24 today.  
00048:01 A. Sure. Basic material, these application  
02 notes, the basic STR 101 Power Point, and some  
03 research papers that you can get off the internet  
04 that are quite dated.

27. PAGE 99:15 TO 99:18 (RUNNING 00:00:18.042)

15 Q. At any time you've been at Life Tech,  
16 have you been informed of potential legal issues  
17 with regard to sales of STR kits for cell line  
18 authentication or bone marrow engraftment?

28. PAGE 99:23 TO 100:14 (RUNNING 00:00:41.973)

23 BY MR. CARROLL:  
24 Q. Just for the start, I am asking for a  
00100:01 yes or no, whether you've had any information.  
02 I wouldn't ask yet what the information  
03 is.  
04 A. Okay. Yes.  
05 Q. Okay. Who communicated that information  
06 to you?  
07 A. I don't recall. It came through an  
08 e-mail. I skipped through it. I didn't --  
09 Q. It is not this e-mail?  
10 A. No.  
11 Q. It is another e-mail?  
12 A. Yes.  
13 Q. And do you recall, was that an e-mail  
14 that was company-wide?

29. PAGE 100:17 TO 100:17 (RUNNING 00:00:01.101)

17 THE WITNESS: I don't know.

**Promega Corporation v. Life Technologies Corporation**

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30. PAGE 101:11 TO 101:12 (RUNNING 00:00:05.981)

11 Q. As you sit here today, do you have an  
12 understanding of what prompted the communication?

31. PAGE 101:15 TO 101:15 (RUNNING 00:00:01.038)

15 THE WITNESS: Yes.

32. PAGE 101:22 TO 101:23 (RUNNING 00:00:08.289)

22 Q. Okay. Did it have anything to do with  
23 the lawsuit between Promega and Life Tech?

33. PAGE 102:02 TO 102:14 (RUNNING 00:00:38.223)

02 THE WITNESS: Yes.  
03 BY MR. CARROLL:  
04 Q. Okay. In this communication, were you  
05 instructed in any way as to how to sell STR kits  
06 for cell authentication or bone marrow  
07 engraftment?  
08 A. No.  
09 Q. No?  
10 A. (Responded by shaking head.)  
11 Q. In this communication, was there  
12 communicated a policy change at Life Tech with  
13 regard to the sale of STR kits into non-forensic  
14 fields?

34. PAGE 102:21 TO 103:13 (RUNNING 00:00:47.008)

21 THE WITNESS: I don't recall.  
22 BY MR. CARROLL:  
23 Q. You don't recall the -- whether there  
24 was a policy change?  
00103:01 A. I don't recall who it came from.  
02 Q. Who it came from, okay. All right.  
03 And the time period for this  
04 communication, was it this year? Last year?  
05 A. I don't recall. A year, maybe.  
06 Q. Okay. As a result of this  
07 communication, have you changed the way you sell  
08 STR kits in any way?  
09 A. No.  
10 Q. As a result of this communication, are  
11 you aware of anyone else in the sales team who's  
12 changed the way they sell STR kits?  
13 A. No.

35. PAGE 132:09 TO 132:12 (RUNNING 00:00:15.053)

09 My question is, is there any group  
10 within Life Tech, or any initiative ongoing today  
11 to increase sales for the non-forensic side of the  
12 business of STR kits?

36. PAGE 132:14 TO 133:09 (RUNNING 00:00:51.383)

14 THE WITNESS: Yes.  
15 BY MR. CARROLL:  
16 Q. Okay. Can you describe that?  
17 A. The initiative is to grow the business  
18 in all areas.  
19 Q. Okay.  
20 A. Not one versus the other. But forensic,  
21 non-HID, all areas.  
22 Q. The whole thing?  
23 A. Whole thing. That is all.  
24 Q. Who is behind that initiative?

**Promega Corporation v. Life Technologies Corporation**

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00133:01 A. Jerry Andros.  
02 Q. Andros. How do you spell that?  
03 A. A-N-D-R-O-S.  
04 Q. What is his title?  
05 A. I believe today it is director of  
06 applied markets.  
07 Q. How does he communicate that initiative  
08 to the troops out there?  
09 A. Through e-mail.

**37. PAGE 133:20 TO 134:10 (RUNNING 00:00:37.678)**

20 Q. Mm-hmm. Is there anything like that  
21 that you or your group looks at, in terms of  
22 whether or not the business is growing and you are  
23 satisfying the initiative?  
24 A. Yes.  
00134:01 Q. And how do you do that?  
02 A. A report is sent monthly of sales  
03 history from this year versus last year in shared  
04 accounts, in forensic accounts.  
05 Q. Okay. And the first part of that, you  
06 said a report is done monthly and it is -- did you  
07 say it was shipped? Or sent?  
08 A. It is e-mailed.  
09 Q. E-mailed?  
10 A. Mm-hmm.

**38. PAGE 136:23 TO 137:06 (RUNNING 00:00:17.110)**

23 Q. Okay. Do you personally stand to gain  
24 from meeting your quota?  
00137:01 A. Personally, yes.  
02 Q. How does that work?  
03 A. Compensation.  
04 Q. Okay. Do you stand to lose if you don't  
05 make your quota?  
06 A. Yes.

**39. PAGE 138:02 TO 138:05 (RUNNING 00:00:07.375)**

02 Q. So as far as you are concerned, the more  
03 sales, the better, because that gets you closer to  
04 your quota?  
05 A. Yes.

**40. PAGE 138:06 TO 138:22 (RUNNING 00:00:47.284)**

06 Q. Okay. Is there any initiative you are  
07 taking right now to try to make that happen?  
08 A. Yes.  
09 Q. Okay. What is that?  
10 A. Sending flyers and monthly e-mail  
11 newsletters to my forensic customers. Umm, you  
12 know, following up with new products that come out  
13 and sending that information to my forensic  
14 customers.  
15 Q. Okay. Any of that effort headed towards  
16 the non-forensic side by you?  
17 A. Not right now.  
18 Q. Have you done it in the past?  
19 A. In the past, but it is not given -- I am  
20 not -- it has not given me enough revenue to spend  
21 my time. I don't have the time to spend doing  
22 that.

**41. PAGE 140:22 TO 141:11 (RUNNING 00:00:35.255)**

22 Q. In your view, is the cell line


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23 authentication business, in the context of using  
24 STR kits from Life Tech, growing?  
00141:01 A. No.  
02 Q. No?  
03 A. No.  
04 Q. Steady state?  
05 A. Steady, maybe declining.  
06 Q. Same question with regard to bone marrow  
07 engraftment using STR kits. Is that a growing  
08 business for Life Tech?  
09 A. No.  
10 Q. Okay.  
11 A. No.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:22:15.716)

Promega Corporation v. Life Technologies Corporation

 Hall, Daniel H. (Vol. 01) - 07/26/2011 [Hall, Daniel]

1 CLIP (RUNNING 00:01:38.069)

 Hall Clip 2

HALL2

1 SEGMENT (RUNNING 00:01:38.069)



1. PAGE 52:25 TO 54:04 (RUNNING 00:01:38.069)

25 Q. And do you recall what Philip said?  
00053:01 A. He said he thought that they wanted to do a  
02 bone marrow transplant application, but that he did  
03 not give them information around our Identifiler  
04 direct kit because it wasn't an appropriate  
05 application.  
06 Q. Identifiler's not appropriate for bone  
07 marrow transplant?  
08 A. As far as the RUO label is concerned.  
09 Q. As far as what?  
10 A. The research-use-only label is concerned.  
11 Q. Oh, okay. Does that label prevent you from  
12 selling Identifiler into laboratories that use that  
13 STR kit for bone marrow transplant monitoring?  
14 A. It's not clear to me exactly what the  
15 boundaries are around that, so I intentionally don't  
16 discuss that as an application, and we don't support  
17 it, and we don't have any tools or promotional  
18 activities around that as an application.  
19 Q. Is that because of regulatory issues with  
20 the FDA?  
21 A. No.  
22 Q. Well, then, what's the concern?  
23 A. It's my understanding that it's not  
24 licensed for that.  
25 Q. Licensed from whom?  
00054:01 A. Promega.  
02 Q. Is that something everyone knows in the  
03 sales department?  
04 A. Yes.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:01:38.069)

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page 1


PTX1357

PTX1357\_0001

**Promega Corporation v. Life Technologies Corporation**

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 **Czar, Phillip (Vol. 01) - 12/16/2011** 1 CLIP (RUNNING 00:00:23.459)

 Okay. Now, can you give me a sense of the ...

**CZAR13**

**1 SEGMENT (RUNNING 00:00:23.459)**



**1. PAGE 132:08 TO 132:14 (RUNNING 00:00:23.459)**

08           Q   Okay. Now, can you give me a sense of the  
09   proportion of these sales that are going to non-crime  
10   labs? Are more of those sales coming from the GS  
11   group than the HID group?  
12           A   Well, I don't think there's a clear answer to  
13   that because -- because there are -- we share the  
14   customer. So, does that answer your question?

**TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:00:23.459)**

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page 1


**PTX1358**

PTX1358\_0001


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**Promega Corporation v. Life Technologies Corporation**



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 **Sandulli, Guido (Vol. 01) - 01/13/2012**


1 CLIP (RUNNING 00:00:38.265)

 Sandulli Clip 1 30(b)(6)
**SAND1****1 SEGMENT (RUNNING 00:00:38.265)****1. PAGE 101:08 TO 101:24 (RUNNING 00:00:38.265)**

08 Q. Turn to page 11, if you would, of the  
 09 exhibit, please.  
 10 A. I'm there.  
 11 Q. The sixth line from the bottom, could you  
 12 read that where it says bulk.  
 13 A. Bulk amylogen and primer.  
 14 Q. And that has a U.S. identifier number next  
 15 to it?  
 16 A. Yes.  
 17 Q. And that shows .038 milliliters at .97  
 18 USD; correct?  
 19 A. Yes.  
 20 Q. And so that would have been a component  
 21 part that would have at some point come from the  
 22 United States?  
 23 A. Yes. That would have gone into the primer  
 24 mix.

 **Sandulli, Guido (Vol. 01) - 12/14/2011**


1 CLIP (RUNNING 00:00:30.947)

 Sandulli Clip 2
**SAND2****1 SEGMENT (RUNNING 00:00:30.947)****1. PAGE 159:12 TO 159:23 (RUNNING 00:00:30.947)**


12 Q. And where are those -- first of all, what  
 13 do you know that is manufactured of the primers in the  
 14 United States?  
 15 A. I know that some of the labeled and  
 16 mobility modified alligoes are produced at -- are  
 17 synthesized at least in our Pleasanton facility.  
 18 Where they get their DNTP's and other raw materials  
 19 from, I don't know.  
 20 Q. When you say "our Pleasanton facility" --  
 21 A. Life Technologies Pleasanton facility.  
 22 Q. Okay. And that's in what state?  
 23 A. Pleasanton, California.

<b>TOTAL: 2 CLIPS FROM 2 DEPOSITIONS (RUNNING 00:01:09.212)</b>
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# Promega Corporation v. Life Technologies Corporation

 **Shepherd, Michelle (Vol. 01) - 07/26/2011 [Shepherd, Michelle]**

1 CLIP (RUNNING 00:04:42.843)

 THE VIDEOGRAPHER: Good morning. This ...

SHEP

5 SEGMENTS (RUNNING 00:04:42.843)



## 1. PAGE 5:05 TO 6:16 (RUNNING 00:01:25.250)

05 THE VIDEOGRAPHER: Good morning. This  
06 marks the beginning of Volume I, Videotape No. 1, in  
07 the deposition of Life Technologies Corporation, by  
08 the 30(b)(6) witness, Michelle Shepherd, in the  
09 matter entitled "Promega Corporation, et al., versus  
10 Life Technologies Corporation, et al.," filed in the  
11 Superior Court -- excuse me, in the United States  
12 District Court for the Western District of  
13 Wisconsin. This is Case No. 10-CV-281. Today's  
14 date is July 26, 2011. Time on the video monitor is  
15 ten o'clock.

16 The video operator today is Fritz Sperberg,  
17 a notary public contracted by Merrill Legal  
18 Solutions at 20750 Ventura Boulevard, Woodland  
19 Hills, California. This video deposition is taking  
20 place at 725 South Figueroa Street in Los Angeles,  
21 and was noticed by Pete Carroll of Medlen & Carroll.

22 Counsel, please identify yourselves and  
23 state whom you represent.

24 MR. CARROLL: Pete Carroll and Tom Howerton  
25 for Promega.

00006:01 MS. JOHNSON: Kristine Johnson and Amy Sun  
02 for the defendants.

03 THE VIDEOGRAPHER: Our court reporter today  
04 is Philip Norris of Merrill.

05 Would the reporter please swear in the  
06 witness.

08 MICHELLE S. SHEPHERD  
09 having been first duly sworn, was  
10 examined and testified as follows:

12 EXAMINATION

14 BY MR. CARROLL:

15 Q. Good morning.

16 A. Good morning.

## 2. PAGE 7:09 TO 7:23 (RUNNING 00:00:24.280)

09 Q. All right. Great. Can you state your full  
10 name?

11 A. Michelle Slay Shepherd.

12 Q. Okay. And are you currently employed?

13 A. I am.

14 Q. And where is that?

15 A. By Life Technologies.

16 Q. Okay. Now, can I use today an abbreviation  
17 for that? LTI or Life Tech, if I use those  
18 abbreviations, will you understand that to be Life  
19 Technologies?

20 A. Yes.

21 Q. Okay. And how many years have you been at  
22 LTI?

23 A. Just over 12.

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page 1

PTX1364

PTX1364\_0001

**Promega Corporation v. Life Technologies Corporation**

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**3. PAGE 26:08 TO 27:12 (RUNNING 00:00:55.146)**

08 Q. Okay. All right. Well, the reporter has  
09 kindly premarked an exhibit, Exhibit 1 there, so why  
10 don't we pull that out.  
11 A. Okay.  
12 (The document referred to was marked by the  
13 reporter as Exhibit 1 for identification and is  
14 attached hereto.)  
15 MR. CARROLL: Now that I have an  
16 understanding of what you do, we can talk a little  
17 bit about some of these topics.  
18 Q. You understand that this is litigation and  
19 that Life Tech is one of the parties in the  
20 litigation?  
21 A. Yes.  
22 Q. And you understand this is in a federal  
23 court?  
24 A. Yes.  
25 Q. And you understand that this is a  
00027:01 deposition where you speak for the company?  
02 A. Yes.  
03 Q. So it's not just your knowledge, it's the  
04 collective knowledge of the company?  
05 A. Yes.  
06 Q. Okay. And are there steps you took before  
07 today to kind of acquire that collective knowledge  
08 of the company?  
09 A. Yes.  
10 Q. And what were those steps?  
11 A. I reviewed some documents. I spoke with  
12 our attorneys.

**4. PAGE 65:03 TO 65:14 (RUNNING 00:00:37.896)**

03 Q. Okay. Since you go there, let me take you  
04 to what's been marked as Exhibit 1, and take you to  
05 paragraph -- the numbered paragraph -- 14. You  
06 mentioned Foster City as where the kits are  
07 manufactured?  
08 A. Components of the kits are manufactured in  
09 Foster City.  
10 Q. And these are the STR kits?  
11 A. Yes.  
12 Q. Okay. What components? If you know.  
13 A. The allelic ladders.  
14 Allelic is a-l-l-e-l-i-c.

**5. PAGE 68:01 TO 69:10 (RUNNING 00:01:20.271)**

00068:01 Q. So that's the final configuration of the  
02 kit? The box is sealed, nothing more is going to go  
03 into the kit? It's going to come out of Foster City  
04 and go to a client, go to a customer?  
05 A. No. And I'm not certain there -- all of  
06 these varieties of AmpFLSTR kits are assembled in  
07 Foster City. They may be assembled in Warrington.  
08 Q. Oh, really?  
09 A. Yes.  
10 Q. Okay. So some complete kits may be shipped  
11 out of England to a customer?  
12 A. They would be shipped to a warehouse in the  
13 States, and from there be shipped to a customer.  
14 Q. Okay. So let's say I'm a customer in  
15 Germany.  
16 A. Okay.  
17 Q. Would I ever get a kit directly from  
18 England, or would it go to this warehouse in the

**Promega Corporation v. Life Technologies Corporation**

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19 United States and then back out?  
20 A. I'm only able to speak to the U.S. shipping  
21 and manufacturing.  
22 Q. Okay. So for -- or how about Canada,  
23 that's one of your areas?  
24 A. Yes.  
25 Q. So if I'm -- if I'm in Montreal --  
00069:01 A. Okay.  
02 Q. -- and I order an STR kit --  
03 A. Yes.  
04 Q. -- I may very well have components from  
05 that kit come from England?  
06 A. Yes.  
07 Q. But it will be assembled in the -- it will  
08 be warehoused, sorry, in the United States and  
09 shipped to me from that warehouse?  
10 A. Correct.


**TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:04:42.843)**

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**Promega Corporation v. Life Technologies Corporation**

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 **Shewale, Jaiprakash (Vol. 01) - 11/30/2011 [Shewale, Jaiprakash]** 1 CLIP (RUNNING 00:00:55.314)

 Shewale Clip 7

**SHE7**

**1 SEGMENT (RUNNING 00:00:55.314)**



**1. PAGE 138:17 TO 139:10 (RUNNING 00:00:55.314)**

17 Q. It says, Hi Manohar, sorry I missed your  
18 call. Anyway, I heard your message and got this  
19 one. I will work with Jai on getting updated  
20 presentation material. Do you see that?

21 A. Uh-huh.

22 Q. Do you recall this email?

23 A. I recall this email.

24 Q. Okay. And did you work with Lisa on  
25 getting upgraded presentation material for this  
00139:01 upcoming meeting?

02 A. I gave her slides onto the data, but I  
03 don't remember exactly which presentation she has  
04 used those data and slides.

05 Q. Okay. But these data and slides had to do  
06 with your profiling of the NCI cell line DNA that  
07 we've been talking about today?

08 A. Yes. That's correct.

09 Q. And the ATCC cell lines?

10 A. Yes.

**TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:00:55.314)**